TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 268.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, AND F. R. COUDERT, AS RECEIVERS OF THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION OF THE CITY OF KANSAS CITY, KANSAS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED APRIL 21, 1899.

(17,375.)

(17,375.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 790.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, AND F. R. COUDERT, AS RECEIVERS OF THE UNION PACIFIC RAILWAY COMPANY, PLAINTIFFS IN ERROR,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION OF THE CITY OF KANSAS CITY, KANSAS, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 In the Supreme Court of the State of Kansas.

S. H. H. CLARK ET AL., Receivers, etc., Plaintiffs in Error,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants in Error. } No. 11392.

Be it remembered that on the 22nd day of February, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in error, together with a precipe for a summons in error attached thereto, and also with a transcript of the record of the court of common pleas of Wyandotte county, Kansas, thereto attached and made a part thereof, all of which, with the endorsements thereon, is in the words and figures as follows, to wit:

2 11392. S. H. H. Clark *et al.*, plaintiffs in error, *vs.* The City of Kansas City *et al.*, defendants in error. Petition in error and case-made. Filed Feb. 22, 1899. Jno. Martin, clerk supreme court.

3 Filed Feb. 22, 1899. Jno. Martin, Clerk Supreme Court.

11392.

In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,
vs.
THE CITY OF KANSAS CITY, KANSAS; BOARD OF EDUCATION OF the City of Kansas City, Kansas; Township of Wyandotte of Wyandotte County, Kansas; School District No. 9 of Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.

Petition in Error.

The said plaintiffs in error complain of the said defendants in error for that certain of the defendants in error, at the February, 1899, term of the court of common pleas of Wyandotte county, Kansas, recovered judgment by the consideration of said court against the plaintiffs in error in a certain action then pending in said court, wherein the above-named plaintiffs in error were plaintiffs and the above-named defendants in error were defendants, a copy of the record of the judgment and proceedings in which case, duly certified, is hereto attached, marked Exhibit "A," and made a part of this petition in error; and the said plaintiffs in error allege that there is error in the said record and proceedings in this, to wit:

I.

That the said court erred in setting aside the judgment rendered in said cause upon the 3rd day of July, 1895, in favor of the plaintiffs.

II.

That the court erred in sustaining the demurrer to plaintiffs' petition.

III.

That the court erred in rendering judgment against the plaintiffs.

4 IV.

That the court erred in refusing to enjoin the county treasurer of Wyandotte county, Kansas, from collecting the taxes of the defendant- City of Kansas City, Kansas, and The Board of Education of the City of Kansas City, Kansas, levied against the property of the Union Pacific Railway Company described in plaintiffs' petition.

V.

That the court erred in refusing to enjoin the county clerk of Wyandotte county, Kansas, from entering upon the tax-rolls of said county the levies of the city of Kansas City, Kansas, and of the board of education of the city of Kansas City, Kansas, against the property of the Union Pacific Railway Company described in plaintiffs' petition.

VI.

That the court erred in enjoining the collection of the taxes of Wyandotte township and of school district number nine levied against the property of the Union Pacific Railway Company described in plaintiffs' petition.

VII.

That the court erred in enjoining the extension of the levies of Wyandotte township and of school district number nine against the property of the Union Pacific Railway Company described in plaintiffs' petition.

VIII.

That the court erred in holding that the property of the Union Pacific Railway Company described in plaintiffs' petition was within the limits of the city of Kansas City, Kansas, and subject to the levies of said city and of the board of education of said city.

IX.

That the court erred in holding that the property of the Union Pacific Railway Company described in plaintiffs' petition was not within the limits of Wyandotte township and not subject to the levies of said township and of school district number nine.

5 X.

That the court erred in failing and refusing to hold that chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was in violation of that part of the fourteenth amendment to the Federal Constitution which reads as follows: "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

XI.

That the court erred in refusing to hold that the exception contained in chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," did not bring said act within the inhibition of that part of the fourteenth amendment to the Federal Constitution which reads as follows: "Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," the exception in said statute herein referred to being as follows: "But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes when the same is not owned by any railroad or other corporation."

XII.

That the court — in holding that said chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was and is valid in so far as plaintiffs in error are concerned and binding upon them.

XIII.

That the court erred in holding that the action of the city
6 of Kansas City in taking within its limits the property of the Union Pacific Railway Company, described in plaintiffs' petition, under the provisions of chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was legal, and that the tax levies of said city and of the board of education of said city extended against said property were valid.

Wherefore said plaintiffs in error pray that the judgment of said court rendered upon the 20th day of February, 1899, may be reversed and set aside, and that the judgment rendered herein upon the 13th day of July, 1896, in favor of plaintiffs may be restored in full force and effect. Plaintiffs pray for any further or other or

additional relief to which they may be entitled and as to the court may seem just and proper.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,
Attorneys for Plaintiffs in Error.

7 In the Supreme Court of the State of Kansas.

S. H. H. CLARK ET AL., Receivers of the Union Pacific Railway Company, Plaintiffs in Error,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants in Error.

Præcipe for Summons in Error.

To the clerk of said court:

Please issue summons in error in the above-entitled cause, directed to the sheriff of Wyandotte county, Kansas. It may be served upon T. A. Pollock or F. D. Hutchings, attorneys of record for the following-named defendants in error:

The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas, and Leonard C. Daniels, as county clerk of Wyandotte county, Kansas.

It should also be served upon E. A. Enright, as attorney of record for the township of Wyandotte, Wyandotte county, Kansas, and school district number nine of Wyandotte county, Kansas.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. A. BLAIR,
Attorneys for Plaintiffs in Error.

8 In the Court of Common Pleas of Wyandotte County, State of Kansas.

S. H. CLARK ET AL., Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants.

Transcript of Record.

EXHIBIT "A."

9 Be it remembered that on the 15th day of December, A. D. 1893, the plaintiffs filed with the clerk of said court of common pleas of Wyandotte county, State of Kansas, their petition herein, a copy of which petition being in words and figures as follows:

10 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte, Wyandotte County, Kansas, and School District No. Nine of Wyandotte County, Kansas, Defendants.

Petition.

The plaintiffs for their cause of action allege that on the 13th day of October, 1893, plaintiffs above named, S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson, were by the United States circuit court for the district of Nebraska appointed receivers of all the property of the Union Pacific Railway Company; that afterwards, on the 13th day of October, 1893, they were by the United States circuit court for the district of Kansas appointed ancillary receivers of the property of the Union Pacific Railway Company and given entire charge, custody, and control of all of the property of said company within the State of Kansas; that afterwards, on the — day of November, 1893, plaintiffs J. W. Doane and F. R. Coudert were by the United States circuit court for the district of Nebraska appointed as additional receivers of all the property of the Union Pacific Railway Company; that afterwards, on the 27th day of November, 1893, they were by the United States circuit court for the district of Kansas duly appointed as ancillary receivers of the property of said company, and that said plaintiffs above named have since said date had full charge, custody, and control of all of the property of all kinds and description of the Union Pacific Railway Company; that under the order of appointment as receivers they are now engaged in operating the railroad of the Union Pacific Railway Company, and that under such order of appointment they are authorized to and it is the duty of plaintiffs to pay all

11 legal taxes against the property of the Union Pacific Railway Company and to institute and prosecute all such suits as may be necessary for the proper protection of the property and trusts vested in them as receivers.

Plaintiffs further allege that said The Union Pacific Railway Company is a corporation duly organized in accordance to law and is the owner of a line of railroad and other property located in Wyandotte county, Kansas.

That the said city of Kansas City, Kansas, is a city of the first class organized and existing under and by virtue of the laws of the State of Kansas.

Plaintiffs further allege that on the 8th day of March, 1892, the

said defendants, The City of Kansas City, by a certain ordinance enacted by it upon that date, attempted to include within its boundaries and to bring within its jurisdiction certain unplatted lands lying adjacent thereto and described as follows:

Commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

Also commencing at the northeast corner of the southeast quarter of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence west to the center line of said section fifteen (15); thence north eighty (80) poles; thence west fifty-seven (57) poles; thence south to the southerly line of Fifth street, in the original town site of Armstrong; thence along the southerly line of Fifth street to its intersection with the southerly line of the Muncie boulevard; thence westerly along the southerly line of the Muncie boulevard to the west line of said section
12 fifteen (15); thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15); thence east eighty (80) poles; thence north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hundred fifty-five and eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition; thence north one hundred sixty (160) feet; thence east two hundred seventy-five (275) feet to the center line of Second street, in McAlpine's addition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet to the prolongation *to* the center line of First street, in McAlpine's addition; thence north one hundred thirty-two and eight-tenths (132.8) feet; thence east to the east line of said section fifteen (15); thence north forty (40) poles to beginning.

Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred (100) feet to the southerly line of the right of way of the Union Pacific railway; thence southeasterly along the southerly line of said right of
— the Union Pacific railway; thence southeasterly along the southerly line of said right of way to the east line of said section sixteen (16); thence north about one hundred (100) feet to beginning.

Plaintiffs further allege that said Union Pacific Railway Company was at that time and now is the owner of the lands intended to be described in said ordinance, with the exception of a small portion thereof, consisting of about eight (8) or ten (10) acres, belonging to the Chicago, Rock Island & Pacific Railroad Company.

13 A copy of the ordinance above referred to is attached to this petition, marked Exhibit "A," and made a part hereof.

Plaintiffs allege that said city of Kansas City passed said ordinance and attempted to take said lands within its limits under and by virtue of the provisions of chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class, and the adding thereto certain adjoining territory;" and plaintiffs are advised, and so charge the fact to be, that in so far as said statute attempts to authorize the taking of said lands within the limits of Kansas City, Kansas, as attempted in said ordinance, "Exhibit A," it is unconstitutional, null, and void, in this, to wit: That by reason of that portion of the act which excepts from its operation any tract or tracts of land used for agricultural purposes when the same is not owned by any railroad or other corporation it is in violation of that part of the fourteenth amendment to the Constitution of the United States which reads as follows: "Nor shall any State deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction *of* the equal protection of the law;" and, furthermore, that by reason of said exceptions and by reason of the facts set forth in this petition said act is a violation of section one (1) of article twelve (12) and of section seventeen (17) of article two (2) of the constitution of the State of Kansas.

Plaintiffs are further advised, and so charge the fact to be, that said city of Kansas City was without authority of law to include within its boundaries the land above described, as attempted by it; that the action of said city in so doing was null and void, and that said land is not and never has been within the limits of said city.

Plaintiffs further allege upon information and belief that there was not at the time of the passage of said chapter 74 of the
14 Session Laws of Kansas for 1891 any city of thirty thousand (30,000) inhabitants or more in the State of Kansas where the conditions referred to in the first part of the said act permitting the adding of additional territory to a city by the passage of an ordinance merely exist; and plaintiffs are advised, and so charge the fact to be, that said act of the legislature, while purporting to be a general act, was intended solely to apply to the lands attempted to be taken within the limits of said Kansas City, Kansas, by said ordinance, "Exhibit A."

Plaintiffs further allege that no notice, either personal or by publication or otherwise, was ever given to said railway company of the intention of said city to enact the ordinance in question or to take the territory in question into the said city, and that said railway company had no opportunity to be heard before the council of said city upon the subject-matter of said ordinance or to protest against the passage of said ordinance.

Plaintiffs further allege that the lands so attempted to be taken within the boundaries of said city, as aforesaid, and owned by the said Union Pacific Railway Company, except that portion thereof used for railroad purposes and assessed by the State board of rail-

road assessors, appear upon the tax-rolls of said county of Wyandotte, now in the hands of the county treasurer thereof, under the following descriptions, and are assessed for the year 1893 at the following values, which valuations appear upon said tax-rolls:

Description No. 1.—All that portion of the east thirty (30) acres of northwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), being seventeen and $\frac{20}{100}$ (17.20) acres, lying west of and adjacent to county road (Fifth street), running through said tract of land from north to south. Valuation, $11,465.00.

Description No. 4.—Commencing at a point seven hundred fifty-three (753) feet north of the southeast corner of the southwest
15 quarter (¼) of the southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), said point being fifty (50) feet north of center line of Kansas City and Topeka railway, thence west fifty (50) feet from and parallel to said center line of said railway to west line of said section fifteen (15), township eleven (11), range twenty-five (25); thence north along west line of said section fifteen (15) to a point fifty (50) feet south of center line of most southerly track of Union Pacific Railway Company, measured at right angle- thereto; thence easterly fifty (50) feet from and parallel to said center line of said track to east line of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence south on said west line to beginning, being three and eighty-five-hundredths (3.85) acres. Valuation, $3,830.00.

Description No. 5.—Commencing at a point which is three hundred seventy and $\frac{52}{100}$ (370.52) feet north and thirty-five (35) feet west from southeast corner of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), thence westerly three hundred thirty-two and $\frac{48}{100}$ (332.48) feet south from and parallel to center line of main track of Kansas City and Topeka railway to west line of section fifteen (15), township eleven (11), range twenty-five (25); thence south on said west line of said section fifteen (15), township eleven (11), range twenty-ve (25), to southwest corner thereof; thence east on south line of section fifteen (15), township eleven (11), range twenty-five (25), thirteen hundred five and $\frac{4}{10}$ (1,305.4) feet to a point thirty-five (35) feet west from the southeast corner of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence north three hundred seventy and $\frac{52}{100}$ (370.52) feet to beginning, being thirteen and $\frac{85}{100}$ (13.85) acres. Valuation, $9,250.00.

16 Description No. 6.—Commencing at a point fifty (50) feet south of center of track of Union Pacific railway, measured at right angles thereto, which point is eight (8) poles east and forty (40) poles south of northeast corner of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), thence westerly fifty (50) feet south and parallel to said center line of track to east line of county road running through said tract of land from north to south; thence southerly along east line of said county road to east line of southwest quarter (¼) of southwest quarter (¼) of section

fifteen (15), township eleven (11), range twenty-five (25); thence south on said east line to a point fifty-two (52) poles north of southeast corner of southwest quarter (¼) of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence east eighty-five (85) poles to east line of southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25); thence north on said east line twenty-eight (28) poles; thence east eight (8) poles; thence north forty (40) poles to beginning, excepting right of way one hundred (100) feet wide, fifty (50) feet on each side of center line of Union Pacific tracks as located through said lands, being twenty-five (25) acres. Valuation, $22,500.00.

Description No. 7.—Commencing at a point six hundred fifty-nine and six-tenths (659.6) feet south of a point on north line of southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), and one hundred thirty-two (132) feet east of center of said section, thence south six hundred twenty-one and nine-tenths (621.9) feet, west one hundred thirty-two (132) feet, south two hundred fifty-two (252) feet, east one hundred eighty-two (182) feet to southwest corner of lot one (1), block one (1), McAlpine's addition to Armourdale; thence north along west line of said lot one (1), block one (1), one hundred seventy-five (175) feet to southwest corner of lot one (1), block
17 two (2), in said addition; thence east along south line of said block two (2) to the southeast corner of lot ten (10) thereof; thence north along east line of said lot ten (10) to southeast corner of lot eleven (11), block two (2); thence east along south line of north half (½) of block five (5) to southeast corner of lot eleven (11), block five (5), said addition; thence north along east line of said lot eleven (11) to southeast corner of lot ten (10), block four (4); thence east along south line of blocks nine (9) and ten (10), prolonged to west line of lands owned by Swift Packing Company; thence north along said west line three hundred ninety-two and eight-tenths (392.8) feet to the Union Pacific Railway Company's lands; thence west along south line of said railway company's lands fifteen hundred eighty-four and $\frac{75}{100}$ (1,584.75) feet to beginning, excepting right of way one hundred (100) feet wide, fifty (50) feet on each side of center line of Union Pacific tracks as located through said land, twelve and five-hundredths (12.05) acres. Valuation, $12,050.00.

Description No. 8.—Commencing eight (8) poles east of the northwest corner of southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25), thence south forty (40) poles; thence east to a point fifty (50) feet west from center line of Armourdale spur of the Union Pacific railway, northerly fifty (50) feet from and parallel to center line of said Armourdale spur to the east and west center line of section fifteen (15), township eleven (11), range twenty-five (25); thence west on said line of said section to beginning, excepting right of way one hundred (100) feet wide, fifty (50) feet on each side of center line of Union Pacific tracks as located through said land, being seventeen and fifty-hundredths (17.50) acres. Valuation, $17,500.00.

Description No. 9.—Commencing at intersection of east and west center line of section fifteen (15), township eleven (11), range
18 twenty-five (25), with west bank of Kansas river; thence west along said center line of section fifteen (15), township eleven (11), range twenty-five (25), to a distance of seven hundred thirty-seven (737) feet, more or less, to a point fifty (50) feet from the center of the Armourdale spur of the Union Pacific railway, southerly fifty (50) feet from and parallel to center line of said Armourdale spur, a distance of six hundred eighty-two (682) feet, more or less, to north line of lands owned by Kansas City Stock Yards Company; thence east along said north line of lands owned by Kansas City Stock Yards Company to west bank of Kansas river to place of beginning, eleven and $\frac{63}{100}$ (11.63) acres. Valuation, $6,960.00.

Plaintiffs further allege that the balance of said lands belonging to said Union Pacific Railway Company and included within those attempted to be taken into said city of Kansas City by said ordinance, "Exhibit A," are used for railroad purposes and assessed by the State board of railroad assessors; that said lands, with other lands located in Wyandotte township of said county and used for railroad purposes, appear upon the tax-rolls of Wyandotte county for the year 1893 under the following descriptions and are assessed for the year 1893 at the following values, which valuations appear upon said tax-rolls:

Road-bed, Right of Way, and Other Property Assessed and Returned by State Board of Assessors.

Main track, 11.75 miles, at $12,042.72 per mile.....	$141,502.00
Side track, 26.42 miles, at $2,500.00 per mile.....	66,050.00
Buildings and improvements	26,060.00
Total	$233,612.00

Plaintiffs further allege that that part of said lands used for railway purposes and assessed by the State board of railroad assessors which are included within said ordinance, "Exhibit A," would, if divided from the balance of the right of way located in
19 Wyandotte township and correctly apportioned, appear upon the tax-rolls of said county for the year 1893 under the following descriptions and at the following valuations:

Road-bed, Right of Way, and Other Property Assessed and Returned by the State Board of Railroad Assessors.

Main track, 1.71 miles, at $12,042.72 per mile.....	$20,593.00
Side track, 25.75 miles, at $2,500.00 per mile.....	64,375.00
Buildings and improvements.....	26,000.00
Total.....	$110,968.00

Plaintiffs further allege that such portions of said lands owned by the Union Pacific Railway Company not actually used for railroad purposes are vacant and unoccupied lands which are held and possessed by said railroad company for railroad purposes.

Plaintiffs further allege that the said city of Kansas City has levied and certified to the county clerk of said county of Wyandotte a tax of 29.6 mills on the dollar against all of the taxable property located in said city for the year 1893, and that said tax has been extended and charged by the county clerk upon the tax-rolls of said county against the above-described property of said Union Pacific Railway Company, making the amount of taxes levied against each of said pieces of property by the said city of Kansas City for the year 1893 as follows, to wit:

Description No. 1, valuation,	$11,465.00;	tax.....	$350.83
Description No. 4, valuation,	3,530.00;	tax.....	104.49
Description No. 5, valuation,	9,250.00;	tax.....	273.80
Description No. 6, valuation,	22,500.00;	tax.....	666.00
Description No. 7, valuation,	12,050.00;	tax.....	356.68
Description No. 8, valuation,	17,500.00;	tax...	518.00
Description No. 9, valuation,	9,960.00;	tax...	208.02
			$2,475.82

and in the aggregate the sum of $2,475.82 taxes levied by the said city of Kansas City against said property for the year 1893.

Plaintiffs further allege that said defendant, The Board of Education of the City of Kansas City, has levied and certified to
20 the county clerk of said county a tax of 11.1 mills on the dollar against all of the taxable property located within the boundaries of said city for the year 1893, and that the said tax has been extended and charged by the county clerk of said county upon the tax-rolls of said county against the above-described property of said Union Pacific Railway Company, making the amount of taxes levied against each of said pieces of property by said board of education for the year 1893 as follows, to wit:

Description No. 1, valuation,	$11,465.00;	tax...	$127.26
Description No. 4, valuation,	3,530.00;	tax.....	39.18
Description No. 5, valuation,	9,250.00;	tax....	102.68
Description No. 6, valuation,	22,500.00;	tax...	240.75
Description No. 7, valuation,	12,050.00;	tax.....	133.76
Description No. 8, valuation,	17,500.00;	tax...	194.25
Description No. 9, valuation,	6,960.00;	tax.....	77.25
			$924.13

and in the aggregate the sum of $924.13 taxes levied by said board of education against said property for the year 1893.

Plaintiffs further allege that said defendant, Township of Wyandotte, has levied and certified to the county clerk of said county of Wyandotte a tax of nine (9) mills on the dollar against all the tax-

able property located in said township for the year 1893, and that said tax has been extended and charged by the county clerk of said county upon the tax-rolls of said county against all that portion of the property of said Union Pacific Railway Company attempted to be taken within the limits of said Kansas City by said ordinance, "Exhibit A," which is used for railway purposes, together with other right of way belonging to said railway company located in Wyandotte township, making the total amount of taxes levied by said township against all of said property used for right of way purposes as follows, to wit, the sum of two thousand one hundred two dollars and forty-four cents ($2,102.44).

Plaintiffs further allege that the tax levied by said township would, if extended against that portion of said property used for railroad purposes and included within said ordinance, "Exhibit A," amount to nine hundred ninety-eight dollars and seventy-
21 one cents (998.71).

Plaintiffs further allege that said defendant, School District No. Nine (9), has levied and certified to the county clerk of said Wyandotte county a tax of five (5) mills on the dollar against all the taxable property located in said school district for the year 1893, and that said tax has been extended and charged by the county clerk of said county upon the tax-rolls of said county against all that portion of the property of said Union Pacific Railway Company attempted to be taken within the limits of said Kansas City by said ordinance, "Exhibit A," which is used for railroad purposes, together with other right of way belonging to said company located within said school district number nine (9), making the total amount of taxes levied by said school district against all of said property used for right of way purposes as follows, to wit, the sum of six hundred eighty-six and $\frac{10}{100}$ ($686.10) dollars.

Plaintiffs further allege that the tax levied by said school district would, if extended and charged against that portion of said property used for railway purposes and included within said ordinance, "Exhibit A," amount to five hundred fifty-four and $\frac{84}{100}$ ($554.84) dollars.

Plaintiffs further allege that said defendants, City of Kansas City and Board of Education of Kansas City, claim jurisdiction over all the lands described in said ordinance, "Exhibit A," including that used for railroad purposes, and claim that its levies should have been extended and charged against all of said property, and further claim that the levies of said Wyandotte township and school district No. nine (9) should not have been extended and charged against any portions thereof.

Plaintiffs further allege that said township of Wyandotte and said school district number nine (9) claim that none of said lands described in said ordinance, "Exhibit A," were legally taken into the limits of said Kansas City, and that the same remain
22 within the jurisdiction of said Wyandotte township and said school district, and that its levies should have been extended against all of the lands included in said ordinance, "Exhibit A," and that the levies of said Kansas City and board of education of

Kansas City should not have been extended and charged against any portion thereof.

Plaintiffs allege that they have been advised and accordingly allege that the contention of said township and school district is correct. Plaintiffs say, however, that they stand willing and ready to pay the taxes assessed against all of said property as soon as it has been finally determined which taxes are properly a lien thereon.

Plaintiffs further allege that said M. G. McLean, county treasurer of said county, now has possession of said tax-rolls of Wyandotte county for the year 1893 and propose to and will collect the amounts of said city and school taxes levied against said property as aforesaid, and that said county clerk will continue from year to year to extend the levies of said Kansas City and said board of education of Kansas City against said property of the Union Pacific Railway Company unless prevented by the injunction of some court of competent jurisdiction from doing so.

Wherefore, as plaintiffs are remediless at common law, they pray this court to issue an injunction against said M. G. McLean as county treasurer of said county and against his deputies, assistants, and successors in office, forever enjoining them from collecting the amounts of said city and school taxes levied and charged against said property for the year 1893, as aforesaid, amounting in the aggregate to the sum of three thousand three hundred ninety-nine and $\frac{95}{100}$ ($3,399.95) dollars, and against the said Charles E. Bruce as county clerk of said county, his deputies, assistants, and successors in office, forever enjoining them from extending any further
23 levies of the said city of Kansas and of the board of education of Kansas City against the above-described property of said Union Pacific Railway Company, and that they may be temporarily enjoined from so doing until the final hearing of this cause.

Plaintiffs further pray that in the event of its being finally determined in this case that said lands included in said "Exhibit A" are a part of said Kansas City under and by virtue thereof that the said county treasurer be forever enjoined from collecting the taxes levied and charged against that portion of said property included in said ordinance, "Exhibit A," which are used for railroad purposes and which appear upon said tax-rolls in favor of said township of Wyandotte and school district number nine (9), and that said county clerk be forever enjoined from extending said township and school district levies against said property last above mentioned; and, to the end that the rights of all parties concerned may be properly protected during this litigation, plaintiffs pray for a temporary injunction against said county treasurer, restraining him from collecting the amount of said township and school taxes until the final termination of this case.

Plaintiffs pray for such other and further or different relief as in equity and good conscience they may be entitled to.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiffs.

24 STATE OF KANSAS, *Wyandotte County,* } ss:

A. W. Scribner, being first duly sworn, says that he is the tax commissioner for the plaintiffs; that as such tax commissioner he has charge of the payment of taxes levied against the property of said Union Pacific Railway Company; that said plaintiffs cannot personally verify this petition for the reason that they are not within the State of Kansas, and, furthermore, because they are not sufficiently familiar with the facts in this case to make such verification.

Affiant further states that he has read the foregoing petition and knows the contents thereof, and that the allegations of fact therein contained are true.

A. W. SCRIBNER.

Subscribed and sworn to before me this 15th day of December, 1893.

A. L. BERGER,
Notary Public.

[SEAL.]

My commission expires Jan. 23rd, 1895.

Precipe.

To the clerk of said court:

Please issue summons in the above-entitled cause, directed to the sheriff of Wyandotte county, Kansas, and made returnable according to law. Suit brought to restrain collection of taxes and other relief.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiff.

25 "EXHIBIT A."

Ordinance No. 2163.

An ordinance adding certain lands therein described, known as the Union Pacific lands, to and making the same a part of the city of Kansas City, Kansas.

Whereas, a certain unplatted territory belonging to the Union Pacific Railroad Company, lies upon and mainly within the city of Kansas City, Kansas; and is so situated as to be bounded on three-fourths (¾) its boundary line by platted territory of, and adjoining to said city; which said railroad land by virtue of its location enjoys the benefit- of said city without sharing its burden-; now therefore,

Be it ordained by the mayor and councilmen of the city of Kansas City, Kansas:

SECTION 1. That the following-described territory, to wit:

Commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25)

east, in Wyandotte county, Kansas; thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

Also, commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east in Wyandotte county, Kansas; thence west to the center line of said section fifteen (15); thence north eighty (80) poles; thence west fifty-seven (57) poles; thence south to the southerly line of Fifth street in the original town site of Armstrong; thence along the southerly line of Fifth street to its intersection with the southerly line of Muncie boulevard; thence westerly along the southerly line of Muncie boulevard to the west line of said section fifteen (15); thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15); thence east eighty (80) poles; thence
26 north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty-eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hundred fifty-five and $^{8}/_{10}$ (355.8) feet to the east line of Third street in McAlpine's addition; thence north one hundred sixty (160) feet; thence east two hundred seventy-five (275) feet to the center line of Second street in McAlpine's addition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet; to the prolongation to the center line of First street in McAlpine's addition; thence north one hundred thirty-two and eight-tenths (132.8) feet; thence east to the east line of said section fifteen (15); thence north forty (40) poles to beginning.

Also, commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16), township eleven (11), range twenty-five (25) east in Wyandotte county, Kansas; thence northwesterly along said northerly line of the right of way of the Union Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred (100) feet to the southerly line of the right of way of the Union Pacific railway; thence southeasterly along the southerly line of said right of way to the east line of said section sixteen (16); thence north about one hundred (100) feet to beginning.

Said tracts being contiguous and containing in the aggregate one hundred seventy-two (172) acres, be and hereby is added to and make a part of the city of Kansas City, Kansas.

SEC. 2. This ordinance shall take effect and be in force from and after its passage and publication in the Kansas City Gazette.

Passed in council March 8, 1892.

WILLIAM ALBRIGHT, *City Clerk.*

Approved March 11, 1892.

THOS. HANNAN, *Mayor.*

(Published March 11, 1892.)

Endorsed: "1647. (Caption.) Petition and precipe. Filed December 15th, 1893. C. S. McGonigal, clerk, by F. L. Kenny, deputy."

27 *Bond for Costs.*

In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK ET AL., as Receivers of the Union Pacific R'y Co., Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants.

STATE OF KANSAS, *Shawnee County,* } *ss:*

We hereby undertake and bind ourselves to pay all costs that may accrue in said action in case plaintiff shall be adjudged to pay them, or in case the same cannot be collected from the defendants, if judgment be obtained against them, that the plaintiffs will pay all the costs made in the above-entitled cause.

J. O. BRINKERHOFF.
H. P. DILLON.
GEO. E. CURTISS.

Approved by me this 15th day of December, 1893.

C. S. McGONIGAL, *Clerk,*
By F. L. KENNY, *Deputy.*

Endorsed: "No. 1647. (Caption.) Bond for costs. Filed Dec. 15, 1893. C. S. McGonigal, clerk. F. L. Kenny, deputy."

28 THE UNITED STATES OF AMERICA:

THE STATE OF KANSAS, *Wyandotte County,* } *ss:*

Court of Common Pleas.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to notify The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; M. G. McLean, as county treasurer of Wyandotte county, Kansas; Charles E. Bruce, as county clerk of Wyandotte county, Kansas; The Township of Wyandotte of Wyandotte County, Kansas, and School District No. Nine (9) of Wyandotte County, Kansas, defendants, that they have been sued by S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs, in the court of common pleas, sitting within and for the county of Wyandotte, and that unless they answer by the 12th day of January, 1894, the petition of said plaintiffs against them filed in the clerk's office of the court aforesaid, the same will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 23rd day of December, 1893.

Witness my hand and the seal of said court, affixed at my office, in the city of Kansas City, Kansas, this 15 day of December, 1893.

C. S. McGONIGAL, *Clerk*,
[SEAL.] By F. L. KENNY, *Deputy*.

(Endorsed:) "No. 1647. Court of common pleas, Wyandotte county, Kansas. Summons. Issued December 15th, 1893. Returnable Dec. 23, 1893. (Caption.) Williams, Loomis & Blair, plaintiffs' attorneys. Filed Dec. 26, 1893. C. S. McGonigal, clerk, by F. L. Kenny, deputy. Temporary restraining order allowed. Suit brought for the recovery of money. C. S. McGonigal, clerk, by F. L. Kenny, dep."

29 STATE OF KANSAS, } ss:
County of Wyandotte, }

Received this summons on the 15th day of December, 1893, at ten o'clock a. m., and served the same, in my county, on the within-named defendant, The City of Kansas City, Kansas, by delivering to N. Barnes personally, as mayor of said city, a true copy of said summons with all the endorsements thereon. Served the same on the Board of Education of the City of Kansas City, Kansas, by delivering to J. H. Gadd personally, as president of said board, a true copy of said summons as above. Served the same on M. G. McLean, as county treasurer of Wyandotte county, Kansas, by delivering to him personally a true copy of said summons as above. Served the same on Charles E. Bruce, as county clerk of Wyandotte county, by delivering to him personally a true copy of said summons as above; served the same on the Township of Wyandotte of Wyandotte County, Kansas, by delivering to James Moore personally, as trustee of said township, a true copy of said summons as above, and served the same on the School District No. Nine (9) of Wyandotte County, Kansas, by delivering to C. S. Mead personally, as director of said district, a true copy of said summons, as above, on the 20th day of December, 1893.

S. S. PETERSON,
Sheriff of Wyandotte County, Kansas,
By J. S. CUMMINS, *Deputy*.

Copies	1.50
Service	1.75
Mileage	2.00
Total	$5.25

30 *Summons.*

THE UNITED STATES OF AMERICA:

THE STATE OF KANSAS, } ss:
Wyandotte County, }

Court of Common Pleas.

The State of Kansas to the sheriff of Wyandotte county, in said State, Greeting:

You are hereby commanded to notify The City of Kansas City, Kansas; The Board of Education of The City of Kansas City, Kansas; M. G. McLean, as county treasurer of Wyandotte county, Kansas; Charles E. Bruce, as county clerk of Wyandotte county, Kansas; The Township of Wyandotte of Wyandotte County, Kansas, and School District No. Nine (9) of Wyandotte County, Kansas, defendants, that they have been sued by S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiff-, in the court of common pleas, sitting within and for the county of Wyandotte, and that unless they answer by the 12th day of January, 1894, the petition of said plaintiff against them filed in the clerk's office of the court aforesaid the same will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 23rd day of Dec., 1893.

Witness my hand and the seal of said court, affixed at my office, in the city of Kansas City, Kansas, this 15th day of Dec., 1893.

C. S. McGONIGAL, *Clerk,*
[SEAL.] By F. L. KENNY, *Deputy.*

(Endorsed:) "No. 1647. Court of common pleas of Wyandotte county, Kansas. Summons. Issued Dec. 15, 1893. Returnable Dec. 23, 1893. (Caption.) Williams, Loomis & Blair, plaintiffs' attorneys. Temp. res. order allowed. C. S. McGonigal, clerk, by F. L. Kenny, dep."

31 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK ET AL., as Receivers of the Union Pacific R'y Co., Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; The Township of Wyandotte of Wyandotte County, Kansas, and School District No. 9 of Wyandotte County, Kansas, Defendants. } No. 1647.

Order.

Upon this 15th day of December, 1893, come the plaintiffs above named, by N. H. Loomis, their attorney, and present to the court

their petition in the above-entitled cause, duly verified, wherein they pray for a temporary injunction against the said M. G. McLean, as county treasurer of Wyandotte county, Kansas, restraining him from collecting certain taxes therein mentioned; upon due consideration whereof it is by the court ordered that the hearing upon said application for a temporary injunction be set for January 5th, 1894, at 10 o'clock a. m., or as soon thereafter as the attention of the court may be had. In the meantime and until the further order of the court it is hereby ordered that the said M. G. McLean, as county treasurer, his deputies, assistants, and successors in office, be, and they are hereby, restrained from collecting the taxes referred to in plaintiff's petition in accordance with the prayer thereof, to wit, the levies of the city of Kansas City, Kansas, and the board of education of Kansas City, Kansas, for the year 1893 against descriptions of land numbered one (1), four (4), five (5), six (6), seven (7), eight (8), and nine (9), as shown in said petition; also the levies of said Wyandotte township and said school district No. nine (9) for the year 1893 against so much of the road-bed, right of way,
32 and other property of said railway company assessed by the State board of assessors as is located within the descriptions contained in "Exhibit A" to said petition and which is described as follows:

Main track, 1.71 miles, at $12,042.72 per mile.....	$20,593.00
Side track, 25.75 miles, at $2,500.00 per mile.....	64,375.00
Buildings and improvements.....	26,000.00
Total.....	$110,968.00

O K.
T. P. ANDERSON, *Judge.*

Attest: C. S. McGONIGAL, *Clerk,*
[SEAL.] By F. L. KENNY, *Deputy.*

Endorsed: "No. 1647."

33 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of Kansas City, Kansas; M. G. McLean, County Treasurer of Wyandotte County, Kansas, and C. E. Bruce, County Clerk of Wyandotte County, Kansas, Defendants.

Know all men by these presents that J. R. Mulvane and Henry Strong, of Topeka, Shawnee county, Kansas, are held and firmly bound unto the above-named defendants and each and every of them in the penal sum of twenty-five hundred ($2,500.00) dollars, for the

payment of which they hereby bind themselves, their heirs, executors, administrators, and assigns.

The conditions of the above obligation are such that whereas a temporary injunction was granted by said court in the above-entitled cause, to take effect upon the filing by said plaintiffs of an injunction bond in the sum of twenty-five hundred ($2,500.00) dollars, subject to the approval of the clerk of this court:

Now, if the above-named plaintiffs shall save defendants and each and every of them harmless from all damages which they or either of them may sustain if it be finally decided that said temporary injunction ought not to have been granted, then this obligation to be null and void; otherwise to remain in full force and effect.

In witness whereof said parties have hereunto set their hands and seals this 3 day of November, A. D. 1894.

J. R. MULVANE.
HENRY STRONG.

34 STATE OF KANSAS, } ss:
County of Shawnee, }

The above-named J. R. Mulvane, of lawful age, being by me first duly sworn, deposes and says that he is worth, over and above all legal exemptions and liabilities, more than the sum of twenty-five hundred ($2,500.00) dollars.

J. R. MULVANE.

Subscribed and sworn to before me this 3rd day of November, 1894.

[SEAL.] FRANK E. SMITH,
Notary Public.

My commission expires February 27, 1898.

STATE OF KANSAS, } ss:
County of Shawnee, }

The above-named Henry Strong, of lawful age, being by me first duly sworn, deposes and says that he is worth, over and above all legal exemptions and liabilities, more than the sum of twenty-five hundred ($2,500.00) dollars.

HENRY STRONG.

Subscribed and sworn to before me this 3rd day of November, 1894.

[SEAL.] FRANK E. SMITH,
Notary Public.

My commission expires Feb. 27, 1898.

The above bond approved November 5th, 1894.

GEO. H. JENKINS, *Clerk.*

Endorsed: "1647. Bond. (Caption.) Filed November 5th, 1894. Geo. H. Jenkins, clerk."

35 STATE OF KANSAS, } ss:
Wyandotte County, }

In the Court of Common Pleas in said County and State.

S. H. H. CLARK ET AL, Receivers for the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY ET AL., Defendants. } No. 1647.

Demurrer.

The City of Kansas City, Kansas; Benjamin Schnierle, county treasurer; Chas. E. Bruce, county clerk of Wyandotte county, Kansas, and The Board of Education of the City of Kansas City, Kansas, demur to the petition in this action, and for cause of demurrer state that it appears upon the face of the petition:

First. That the petition does not state facts sufficient to constitute a cause of action.

K. P. SNYDER,
T. A. POLLOCK,
Attorneys for the Defendants Kansas City et al.
S. C. MILLER,
Attorney for Defendants Benjamin Schnierle, County Treasurer, & C. E. Bruce, County Clerk.

Endorsed: "No. 1647. Court of common pleas. (Caption.) Demurrer. Filed June 12th, 1895. Geo. H. Jenkins, clerk. K. P. Snyder & T. A. Pollock, def'ts' att'ys."

36 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Chas E. Bruce, as County Clerk of Wyandotte County, Kansas, and School District No. Nine of Wyandotte County, Kansas, Defendants.

Motion.

Now come the above-named plaintiffs and show to the court that subsequent to the filing of the petition in this cause and upon the 16th day of July, 1894, the above-named S. H. H. Clark, Oliver W. Mink, and E. Ellery Anderson were by the United States circuit court for the district of Kansas, in an action pending in said court wherein Russel Sage and George J. Gould, trustees, were complainants and The Union Pacific Railway Company *et al.* were defendants, appointed receivers of that portion of the railway and properties of

the Union Pacific Railway Company covered by the consolidated mortgage of the Kansas Pacific Railway Company, dated the first day of May, 1879; that by said order the said Clark, Mink, and Anderson, as receivers, were directed to retain possession of the lands, land grant, railroad, and property of said Union Pacific Railway Company covered by said Kansas Pacific consolidated mortgage and as receivers in said Sage and Gould case to continue to maintain and operate all and singular the lines of railway embraced in said mortgage as a part of the Union Pacific system.

Said plaintiffs further show to the court that immediately after their appointment as receivers in the Sage and Gould case, as
37 aforesaid, the said Clark, Mink, and Anderson duly qualified and entered upon the discharge of their duties as such receivers.

That thereafter John W. Doane and Frederick R. Coudert were duly appointed by the United States circuit court for the district of Kansas in said case of Sage and Gould against The Union Pacific Railway Company *et al.* additional receivers for that portion of the railway lines and properties of the Union Pacific Railway Company covered by said Kansas Pacific consolidated mortgage, with powers in all respects similar and equal to those conferred upon said Clark, Mink, and Anderson; that immediately after their appointment said Doane and Coudert duly qualified and entered upon the discharge of their duties as such receivers.

Said plaintiffs further show to the court that all of the property in controversy in this cause is covered by said Kansas Pacific consolidated mortgage, and that the same is now in the exclusive charge and custody of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert, as receivers in said case of Sage and Gould, trustees, against The Union Pacific Railway Company *et al.*, and that as receivers in said Sage and Gould case they have succeeded to all the powers conferred upon them as receivers under the terms of their original appointment, the said original appointment being the same appointment referred to in the petition filed in this cause.

Wherefore the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederick R. Coudert pray that this action may be continued in their names as receivers of the Union Pacific Railway Company appointed in the case of Russel Sage and George J. Gould, trustees, against The Union Pacific Railway Company *et al.*, pending in the United States circuit court for the district of Kansas, first division.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for said Receivers.

38 STATE OF KANSAS, }
Shawnee County, } ss:

N. H. Loomis, being duly sworn, says that he is one of the attorneys for the above-named receivers; that he has read the foregoing

and known the contents thereof, and that the statements of fact therein contained are true.

N. H. LOOMIS.

Subscribed and sworn to before me this 23d day of March, A. D. 1895.

FRANK E. SMITH,
[SEAL.] *Notary Public.*

My commission expires Feb'y 27, 1898.

Endorsed: "No. 1647. In the court of common pleas of Wyandotte county, Kansas. (Caption.) (Motion.) (No. 2090.) Filed June 13th, 1895. Geo. H. Jenkins, clerk."

39 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Chas. E. Bruce, as County Clerk of Wyandotte County, Kansas, and School District No. Nine of Wyandotte County, Kansas, Defendants.

Journal Entry.

Upon this 13th day of June, 1895, the plaintiffs appearing by A. L. Williams, Moore & Berger, and N. H. Loomis, their attorneys, and the defendant appearing by K. P. Snyder and T. A. Pollock, their attorneys, and it being made to appear to the court that the above-named S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert have, since the commencement of this action, been appointed receivers of that portion of the Union Pacific railway covered by the consolidated mortgage of the Kansas Pacific Railway Company, including all of the property in controversy in this cause, by the United States circuit court for the district of Kansas, in an action therein pending wherein Russel Sage and George J. Gould are complainants and The Union Pacific Railway Company *et al.* are defendants, and that — such receivers in the Sage and Gould case they now have exclusive charge and control of all the property in controversy in this cause and have succeeded to all the powers possessed by them over said property under their original appointment, said original appointment being the same appointment referred to in plaintiffs' petition filed herein.

And now upon the application of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, and all parties consenting thereto, it is by the court ordered that this cause be continued in the name of said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert as receivers of

the Union Pacific Railway Company, appointed in the case of Russel Sage and George J. Gould, trustees, against the Union Pacific Railway Company *et al.*, pending in the United States circuit court
40 for the district of Kansas, first division.

It being further made to appear to the court that the above-named M. G. McLean has been succeeded as county treasurer of Wyandotte county by Benjamin Schnierle, it is by the court ordered, all parties consenting thereto, that said Benjamin Schnierle be substituted as a party defendant herein in the place of said M. G. McLean.

Endorsed: "No. 1642. In the court of common pleas of Wyandotte county, Kansas. (Caption.) Journal entry."

41 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, and F. R. COUDERT, Receivers of the Union Pacific Railway Company, Plaintiffs,

v.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Chas. E. Bruce, as County Clerk of Wyandotte County, Kansas; the Township of Wyandotte of Wyandotte County, Kansas, and School District No. Nine of Wyandotte County, Kansas, Defendants. } No. 1647.

Journal Entry.

JULY 3, 1895.

Upon this day comes — regularly on for final hearing upon the issues joined herein, the defendants having announced that they intend to stand upon their demurrer to plaintiffs' petition. Plaintiffs appeared by A. L. Williams, Moore & Berger, and N. H. Loomis, their attorneys. The defendants appeared by K. P. Snyder and T. A. Pollock, their attorneys. The court, having heard the arguments of counsel and being fully advised in the premises, finds and adjudges that the statute under which the property of the Union Pacific Railway Company in controversy in this cause was attempted to be taken within the limits of Kansas City, Kansas, to wit, chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to cities of the first class, and the adding thereto certain adjoining territory," is unconstitutional, null, and void, and therefore that said property of the Union Pacific Railway Company is not and has not been included within the limits of Kansas City, Kansas, because said ordinance set forth in plaintiffs' petition is void, being based upon an unconstitutional law, and is not and has not been subject to the jurisdiction of said city.

Wherefore the demurrer of defendants to plaintiffs' petition is overruled; to which ruling of the court the defendants duly except.

It is therefore ordered, adjudged, and decreed that said defendant, Benjamin Schnierle, as county treasurer of Wyandotte
42 county, Kansas, his deputies, assistants, clerks, and successors in office, and each and every one of them, be, and they are hereby, permanently enjoined from collecting the tax levies or assessments of said city of Kansas City, Kansas, and the board of education of the city of Kansas City, Kansas, against the following-described lands of the Union Pacific Railway Company:

1. Commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

2. Also commencing at the northeast corner of the southeast quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence west to the center of said section fifteen (15); thence north eighty (80) poles; thence west fifty-seven (57) poles; thence south to the northerly line of Euclid avenue in the original township of Armstrong; thence easterly along the northerly line of Euclid avenue to the southerly line of Fifth street; thence along the southerly line of Fifth street to its intersection with the southerly line of Muncie boulevard; thence westerly along the southern line of the Muncie boulevard to the west line of said section fifteen (15); thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15); thence east eighty (80) poles; thence north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty-eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hundred fifty-five and eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition; thence north one hundred sixty (160) feet; thence east two hundred seventy-five (275) feet to the center line of Second street, in McAlpine's ad-
43 dition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet to the prolongation to the center line of First street, in McAlpine's addition; thence north one hundred thirty-two and $\frac{8}{10}$ (132.8) feet; thence east to the east line of said section fifteen (15); thence north forty (40) poles to the beginning.

Excepting, however, from the foregoing description the following-described tract of land conveyed by the Union Pacific Railway Company to the Kansas City & Topeka Railway Company, March 11, 1889, to wit:

A strip of land three hundred eighty-two and $\frac{48}{100}$ (382.48) feet wide through the west half (½) of the southwest quarter of said section fifteen (15), more specifically described as follows: Beginning at a point five hundred fifty-three (553) feet north of the southeast corner of the southwest quarter (¼) of the southwest quarter (¼) of said section fifteen (15), said point being one hundred fifty (150) feet south of the center line of the main track of the Kansas City and Topeka railway as now located, thence westerly and parallel

to the center line of said track thirty-five (35) feet; thence south one hundred eighty-two and $\frac{48}{100}$ (182.48) feet; thence westerly and parallel to the center line of said track three hundred thirty-two and $\frac{48}{100}$ (332.48) feet distant therefrom to the west line of said section fifteen (15); thence north along the west line of said section fifteen (15) three hundred ninety-two and $\frac{30}{100}$ (392.30) feet; thence easterly and parallel to the center line of said main track and fifty (50) feet distant therefrom thirteen hundred sixty-two (1.362) feet to the east line of the west half ($\frac{1}{2}$) of the southwest quarter ($\frac{1}{4}$) of said section fifteen (15); thence south two hundred (200) feet to the place of beginning.

3. Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union
44 Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred (100) feet to the southerly line of the right of way of the Union Pacific railway; thence southeasterly along the southerly line of said right of way to the east line of said section sixteen (16); thence north about one hundred (100) feet to beginning.

It is further ordered, adjudged, and decreed by the court that said defendant, C. E. Bruce, as county clerk of said county, his deputies, assistants, clerks, and successors in office, and each and every of them be, and they are hereby, enjoined from extending upon the tax-rolls of said Wyandotte county, Kansas, against said property of the Union Pacific Railway Company any of the tax levies or assessments of said city of Kansas City, Kansas, or of the said board of education of Kansas City, Kansas.

It is further ordered by the court, by consent of parties, that the levies of the proper townships and school districts be extended against said property of the Union Pacific Railway Company upon the tax-rolls of said Wyandotte county in lieu of the levies of said city of Kansas City, Kansas, and said board of education of Kansas City, Kansas, here enjoined, but no penalties, interest, or costs shall be added; said taxes to be collected in the manner prescribed by law.

It is further ordered that the extension of said levies against said property, as aforesaid, and the collection of said taxes be stayed until this cause has been finally disposed of on appeal to the Supreme Court or until defendants have filed a written statement herein declaring their intention not to appeal.

It is further ordered, adjudged, and decreed that the plaintiffs do have and recover of and from said defendants their costs herein, taxed at fifty-six dollars and forty cents ($56.40), for which let execution issue.

It is further adjudged and decreed that this judgment shall
45 not in any way affect any rights vested in the defendants or either of them by virtue of any contract heretofore entered

into between said Union Pacific Railway Company and said Kansas City for the building of a viaduct over the land above described.

O K.

N. H. LOOMIS,
Att'y for Plaintiffs.

Endorsed: "No. 1647."

46 Supreme Court, State of Kansas.

THE CITY OF KANSAS CITY, KANSAS, ET AL., Plaintiffs in Error,
vs.
S. H. H. CLARK ET AL., Receivers, etc., of the Union Pacific Railway Company, Defendants in Error.

Supreme court, State of Kansas.

The State of Kansas to the court of common pleas within and for the county of Wyandotte, within and for the State of Kansas, Greeting:

Whereas in a certain civil action lately pending before you, wherein S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, were plaintiffs and The City of Kansas City *et al.* were defendants, a judgment was rendered by you against the said City of Kansas City *et al.*, on a transcript of which judgment and record the said The City of Kansas — *et al.* prosecuted a petition in error in the supreme court within and for the State of Kansas; and

Whereas at the June session of the January term of said court, A. D. 1898, on consideration of the said petition in error it was ordered and adjudged by the said supreme court that the judgment of the said court of common pleas be reversed and said cause be remanded to the said court of common pleas with directions to sustain the demurrer to the plaintiffs' petition; and

Whereas the said S. H. H. Clark *et al.*, receivers, etc., defendants in error, upon a transcript and record of the said judgment of the supreme court did prosecute a writ of error and an appeal to the Supreme Court of the United States; and

Whereas at the October, A. D. 1898, term of the said Supreme Court of the United States upon consideration of the said transcript and record and said writ of error it was ordered and adjudged by the said Supreme Court of the United States that the said
47 writ of error in said cause be dismissed for the want of jurisdiction, and that said cause be remanded to the judges of the supreme court of the State of Kansas for such proceedings as are in conformity with the judgment and decree of the Supreme Court of the United States and the judgment and decree of the supreme court of the State of Kansas, the said writ of error to the Supreme Court of the United States to the contrary notwithstanding;

And whereas on the 31st day of January, A. D. 1899, there was issued from the Supreme Court of the United States a mandate, directed to the judges of the supreme court of the State of Kansas,

directing them to carry into effect the judgment of the said Supreme Court of the United States, as hereinbefore set forth; and

Whereas on the 9th day of February, A. D. 1899, it was by the said supreme court of the State of Kansas ordered and decreed that the mandate of the Supreme Court of the United States be spread upon the records of the supreme court of the State of Kansas, and that the mandate of the said supreme court of the State of Kansas forthwith issue to the court of common pleas of Wyandotte county, Kansas, in accordance with the said judgment and decree of the Supreme Court of the United States:

You are therefore commanded that without delay you cause execution to be made of the said judgment of the supreme court of the State of Kansas according to law, the said petition in error and the said writ of error to the contrary notwithstanding.

Witness my hand and the seal of the supreme court of the State of Kansas hereunto affixed, at my office, in the city of Topeka, on the 10th day of February, A. D. 1899.

[SEAL.]

JNO. MARTIN,
Clerk Supreme Court,
By F. J. FRITCH, *Deputy.*

Certified copy of syllabus, opinion, and mandate from supreme court filed. Entered Feb'y 13, '99.

C. W. LITCHFIELD, *Clerk,*
By F. L. KENNY, *Deputy.*

48 THE CITY OF KANSAS CITY ET AL.
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL. } 10571.

Error from Wyandotte county reversed.

Syllabus by the Court—Doster, C. J.

1. One cannot be heard to complain that a statute which discriminates between classes of persons in the imposition of burdens of municipal control and taxation is unconstitutional as being a denial of the equal protection of the law, unless he belongs to one of the classes discriminated against.
2. The statute, section fifteen (15), chapter thirty-two (32), General Statutes 1897, which provides for the extension of city boundaries over certain classes of adjoining lands, is not violative of the fourteenth amendment to the Constitution of the United States because it exempts agricultural lands from its provisions.

All the justices concurring.
A true copy.
Attest:
[SEAL.]

J. MARTIN,
Clerk Supreme Court.

49 THE CITY OF KANSAS CITY ET AL.
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL. } 10571.

Error from Wyandotte county reversed.

The opinion of the court was delivered by DOSTER, C. J.:

Section 1, chapter 74, Laws of 1891, section 15, chapter 32, General Statutes 1897, reads as follows:

"That whenever any territory adjoining or touching the city limits of any city of the first class having a population of thirty thousand (30,000) inhabitants or more shall be subdivided into lots and blocks, or whenever any unplatted tract of land shall lie upon or mainly within any such city, or is so situated as to be bounded on three-fourths (¾) of its boundary line by platted territory of or adjacent to such city or by the boundary line of such city or by both, the same may be added to and made a part of the city by ordinance duly passed, which ordinance shall describe the territory by giving the name of the subdivision or addition as platted and by giving the metes and bounds of each tract and plat so taken in separately, or of the entire tract or tracts so taken in with the section, town, range and county in which the same is located without further proceedings; but nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes, when the same is not owned by any railroad or other corporation."

By ordinance of March 8th, 1892, the city council of Kansas City, in pursuance to the above statute, extended the city boundaries so as to include certain lands belonging to the defendant in error The Union Pacific Railway Company. The preamble to this ordinance reads as follows:

"Whereas, a certain unplatted territory belonging to the Union Pacific Railroad Company lies upon and mainly within the
50 city of Kansas City, Kansas, and is so situated as to be bounded on three-fourths (¾) of its boundary line by platted territory of, and adjoining to said city; which said railroad land, by virtue of its location, enjoys the benefits of said city, without sharing its burdens, now therefore,"

This preamble shows that the added tracts belonged to one of the classes of lands the annexation of which is authorized by the statute. The defendant in error obtained a perpetual injunction against the collection of city taxes to which the lands in question became subject after their incorporation into the city limits. Error is now prosecuted from the judgment awarding the injunction. The questions for decision are presented to this court, as in the court below, upon the demurrer of the defendants, now plaintiffs in error, to the petition of the plaintiffs, now defendants in error. The contention of the defendants in error as that the act providing for the extension of city boundaries discriminates between classes of real-estate owners and is therefore violative of that part of the fourteenth amendment to the Constitution of the United States which prohibits the States from depriving persons of property with-

out due process of law, or denying to persons within their jurisdiction the equal protection of the law. This contention is based upon the exception forming the last clause of the statute quoted: "But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes when the same is now owned by any railroad or other corporation." So far as this statute discriminates between classes of owners of agricultural lands, the defendants in error cannot be heard to *explain*.

Their lands are not agricultural lands; at least, they do not allege them to be such lands, but, on the contrary, allege that parts of them are used for railroad purposes, and that the remaining portions are vacant and unoccupied lands, held and possessed
51 for railroad purposes. Owning no agricultural land, the defendants in error are not affected by the discrimination which the statute makes between the different classes of owners of such kind of land, and they cannot therefore be heard to complain on that score.

"A court will not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect and who has therefore no interest in defeating it." Cooley's Constitutional Limitations, 6 ed., 196.

The statute, however, does exempt some agricultural lands from its operation. Of this the defendants in error complain and for the like reason as before. The discrimination in this particular is not in respect of the ownership of the lands, but in respect of their character—the uses to which devoted. It is not claimed in specific terms that the legislature is powerless to authorize the extension of city boundaries over lands platted for city purposes and used for city residences, and at the same time exempt agricultural lands having to the city like relations of situation, contiguity and otherwise. Such claim is comprehended, however, within the general scope of the argument made. We do not assent to it. No case in assertion of such doctrine has been cited to us and none we believe can be found. The very fact of land not already surrounded by incorporated portions of the city being used for agricultural purposes is *prima facie* evidence of the rightfulness of its exemption from municipal control. "The fundamental idea of a municipal incorporation is to invest compact or dense populations with the power of local self-government. Indeed, the necessity for such corporations springs from the existence of centers or agglomerations of population, having by reason of density and numbers local or peculiar interests and wants not common to adjoining sparsely settled or agricultural regions." Dillon's Municipal Corporations, 3 ed., sec. 183.

Municipal incorporation involves of necessity the idea of
52 corporate limits coterminous with the urban population and exclusive of the adjoining agricultural tracts. City limits are not of course always terminable with population. Manufacturing and other industrial institutions, like railway yards, roundhouses, grain elevators, and the like, are often situated beyond the limits of city population. Ordinarily in such cases they are immediately adjoining it. In and around such places many persons are

employed at labor both day and night, and the necessity for the inclusion of such places within city boundaries is just as great as though they formed parts of the residence and business portions of the city. To say that the tracts of land upon which these industrial institutions are situated may not be included within city boundaries and subjected to municipal control because an adjoining tract of land used for farming purposes, but equally as near to the heart of the city, is not likewise brought within the city limits, is a claim to us unheard of before. It is the business of the legislature to enact general rules by which the boundaries of incorporated districts may be fixed in the first instance and by which additions thereto may subsequently be made. Dillon's Municipal Corporations, 3 ed., sec. 185.

The special instances in which the general legislative rules may be applied must of necessity be left to the municipal authorities of the city in question. Instances may occur in which both legislative and city council will violate fundamental rules, but the petition of the plaintiffs below, the defendants in error here, does not show any such case.

It is contended that the act in question, though general in its terms, is nevertheless special in point of fact, because at the time of its enactment there was and is yet but one city to which its provisions could apply. This does not make it a special law.

The judgment of the court below was wrong. It is reversed, with directions to sustain the demurrer to the petition.

All the justices concurring.

A true copy.
Attest:
[SEAL.]

J. W. MARTIN,
Clerk Supreme Court.

53 Endorsed: "1647. Filed February 13, 1899. C. W. Litchfield, clerk, by F. L. Kenny, deputy."

54 In the Court of Common Pleas of Wyandotte County, State of Kansas.

S. H. H. CLARK ET AL., Plaintiffs,
vs.
CITY OF KANSAS CITY, KANSAS, ET AL., Defendants.

Now comes the defendants, City of Kansas City, Benj. Schnierle, treas.; Leonard Daniels, clerk; The Board of Education of Kansas City, and move the court to spread the mandate of the supreme court upon the record, and that judgment be entered in accordance therewith.

T. A. POLLOCK,
City Counsellor.
F. D. HUTCHINGS,
City Attorney.

Endorsed: "No. 1647. (Caption.) Motion to spread mandate on record. Motion No. 4095. Filed February 13th, 1899. C. W. Litchfield, clerk."

55 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK ET AL., Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants. } No. 1647.

Motion.

Come now the said defendants, The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of the Township of Wyandotte or Wyandotte County, Kansas, and prays the court to set aside the default heretofore had against them in this action, and for leave to plead herein under such conditions as the court may deem just in the premises.

E. A. ENRIGHT,
Attorney for said Defendants, The Township of Wyandotte, Wyandotte County, Kansas, and School District Number Nine (9) of the Township of Wyandotte, —— County, Kansas.

Endorsed: "No. 1647. In the court of common pleas, Wyandotte Co., Ks. (Caption.) Motion. Filed Feb. 20th, 1899. C. W. Litchfield, clerk."

56 In the Court of Common Pleas of Wyandotte County, Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; M. G. McLean, as County Treasurer of Wyandotte County, Kansas; Charles E. Bruce, as County Clerk of Wyandotte County, Kansas; The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine of Wyandotte County, Kansas, Defendants. } No. 1647.

Order.

Now, on this 20th day of February, 1899, this cause *coming* on for hearing upon the motion of the defendants The City of Kansas City, Kansas; Benjamin Schnierle, county treasurer, and Leonard C. Daniels, county clerk, and The Board of Education of the City of Kansas City, Kansas, to spread upon the record of this court the mandate of the supreme court, and to enter judgment in accord-

ance therewith, and the motion of the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, for leave to file answer to the plaintiffs' petition. The plaintiffs appeared by A. L. Williams, N. H. Loomis, and R. W. Blair, their attorneys. The defendants The City of Kansas City, Kansas; Benjamin Schnierle, Leonard C. Daniels, and The Board of Education of the City of Kansas City, Kansas, appeared by T. A. Pollock and F. D. Hutchings, their attorneys, and the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, appeared by their attorney, E. A. Enright; and the court, after hearing the argument of counsel and being fully advised in the premises, doth order and adjudge:

First. That the mandate of the supreme court be spread upon the record of this court.

Second. It is by the court further ordered and adjudged, in accordance with the mandate of the supreme court, that the judgment and every part thereof which was rendered by this court in
57 this cause on the third day of July, 1895, is wholly set aside and held for naught, to which the plaintiffs except.

Third. It is by the court further ordered and adjudged, in accordance with the mandate of the Supreme Court, that the demurrer to the petition of the plaintiffs of the defendants The City of Kansas City, Kansas; Benjamin Schnierle, county treasurer; Leonard C. Daniels, county clerk of Wyandotte county, Kansas, who has been substituted as a defendant for Charles E. Bruce, his predecessor in office, and The Board of Education of the City of Kansas City, Kansas, is sustained; to which the plaintiffs except.

Fourth. It is by the court further ordered and adjudged that the motion of the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, for leave to plead to the petition of the plaintiffs is overruled; to which plaintiffs and the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, except.

Fifth. It is by the court further ordered and adjudged that the defendant Leonard C. Daniels be, and he is hereby, permanently enjoined and restrained from extending upon the tax-rolls of Wyandotte county, Kansas, any tax levies of said defendant. The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, against the following-described lands of the Union Pacific Railway Company, to wit:

Commencing at the northeast corner of the southwest quarter (¼) of section fifteen (15), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence south forty (40) poles; thence east to the Kansas river; thence down the same to the prolongation of the east and west center line of said section fifteen (15); thence west to beginning.

Also commencing at the northeast corner of the southwest

quarter (¼) of section fifteen (15), township eleven (11), range
58 twenty-five (25) east, in Wyandotte county, Kansas, thence west to the center line of said section fifteen (15); thence north eighty (80) poles; thence west fifty-seven (57) poles; thence south to the southerly line of Fifth street, in the original town site of Armstrong; thence along the southerly line of Fifth street to its intersection with the southerly line of the Muncie boulevard; thence westerly along the southerly line of the Muncie boulevard to the west line of said section fifteen (15); thence south to the southwest corner of the southwest quarter (¼) of section fifteen (15); thence east eighty (80) poles; thence north fifty-two (52) poles; thence east eighty-five (85) poles; thence north twenty-eight (28) poles; thence east eight (8) poles; thence north one hundred ninety-nine (199) feet; thence east three hundred fifty-five and eight-tenths (355.8) feet to the east line of Third street, in McAlpine's addition; thence north one hundred sixty (160) feet; thence east two hundred seventy-five (275) feet to the center line of Second street, in McAlpine's addition, produced; thence north one hundred thirty (130) feet; thence east three hundred fifteen (315) feet to the prolongation of the center line of First street, in McAlpine's addition; thence north one hundred thirty-two and eight-tenths (132.8) feet; thence east to the east line of section fifteen (15); thence north forty (40) poles to the beginning.

Also commencing at a point where the northerly line of the Union Pacific Railway Company's right of way intersects the east line of section sixteen (16), township eleven (11), range twenty-five (25) east, in Wyandotte county, Kansas, thence northwesterly along said northerly line of the right of way of the Union Pacific railway to the west line of said section sixteen (16); thence south along the west line of said section sixteen (16) about one hundred (100) feet to the southerly line of the right of way of Union Pacific railway; thence southeasterly along the southerly line of said right of
59 way to the east line of said section sixteen (16); thence north about one hundred (100) feet to the beginning.

Said tracts being contiguous and containing in the aggregate one hundred seventy-two (172) acres.

To which the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, and the plaintiffs except.

Sixth. It is by the court further ordered and adjudged that the defendant Benjamin Schnierle and his successor in office be, and he is hereby, permanently enjoined and restrained from collecting the tax levies of said defendants, The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, against the said above-described lands of the Union Pacific Railway Company; to which the plaintiffs and the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, except.

Seventh. It is by the court further ordered and adjudged that the plaintiffs have and recover of and from the defendants The Town-

ship of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, the amount of $2.50, their costs in this behalf expended; to which the plaintiffs and the defendants The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine (9) of Wyandotte County, Kansas, except.

And the plaintiffs having announced in open court that they desired no order permitting them to file an amended petition, but would stand upon the allegations of their petition, it is by the court ordered and adjudged that the defendants The City of Kansas City, Kansas; Benjamin Schnierle, county treasurer, and Leonard C. Daniels, as county clerk, and The Board of Education of the City of Kansas City, Kansas, go hence without day and recover of and from the plaintiffs the amount of fifty-eight dollars and forty
60 cents ($58.40), their costs in this behalf expended; to which the plaintiffs except.

W. G. HOLT, *Judge.*

(Copy.)

STATE OF KANSAS, }
County of Wyandotte, } *ss:*

I, C. W. Litchfield, clerk of the court of common pleas for said county, do hereby certify that the foregoing is a full, true, and correct transcript of the record in the above-entitled cause.

In testimony whereof I have hereunto set my hand and seal this 20th day of February, A. D. 1899.

[SEAL.] C. W. LITCHFIELD, *Clerk.*

61 And also on the same day there was issued from the office of the clerk of the supreme court of the State of Kansas a summons in error, which, with the return of service and other endorsements thereon, is in words and figures as follows, to wit:

62 STATE OF KANSAS, *ss:*

Supreme Court.

The State of Kansas to the sheriff of Wyandotte county, Greeting:

You are hereby commanded to notify The City of Kansas City, Kansas; Board of Education of the City of Kansas City, Kansas; Township of Wyandotte of Wyandotte County, Kansas; School District No. 9 of Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, defendants in error, that S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs in error, did on the 22nd day of February, A. D. 1899, file in the clerk's office of the supreme court of Kansas a petition in error and transcript of record, or case-made, the object of which is to obtain a reversal of a certain judgment rendered by

the court of common pleas sitting within and for the county of Wyandotte and State of Kansas in an action pending before said court wherein the said plaintiffs in error were plaintiffs and the said defendants in error were defendants.

63 You will make due return of this summons in error on or before the 6th day of March, A. D. 1899.

Witness my hand and the seal of the supreme court affixed hereto, at my office, in Topeka, this 23rd day of Feb., A. D. 1899.

[SEAL.]

JNO. MARTIN,
Clerk Supreme Court.
F. J. FRITCH, *Dep.*

(Endorsed:) 11392. Supreme court, State of Kansas. S. H. H. Clark *et al.*, receivers, etc., *vs.* The City of Kansas City *et al.* Summons in error. Issued Feb. 23rd, 1899. Returnable Mar. 6, 1899. Filed Feb. 27, 1899. Jno. Martin, clerk supreme court. A. L. Williams, attorney for pl'ff- in error.

STATE OF KANSAS, *County of Wyandotte,* } *ss:*

I received this summons in error on the 24th day of February, 1899, at ten o'clock a. m., and served the same on the 24 day of Feb'y, 1899, on the within-named defendants in error by delivering to F. D. Hutchings and E. A. Enright each personally, as attorneys of record for said defendants in error, a true copy of the

64 within summons in error.

W. LONGFELLOW, *Sheriff.*

Fees.

Service	.65
Copy	.50
Total	1.15

65 And afterwards, on the 23rd day of February, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a bond for costs, which, with the approval thereof and other endorsements thereon, is in words and figures as follows, to wit:

66 In the Supreme Court of Kansas.

S. H. H. CLARK ET AL., as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL., Defendants in Error.

Security for Costs.

We and each of us enter as security for all costs which may accrue to said defendant- in error or to the officers of this court herein, and in default of payment by said plaintiff- in error of said costs and

after ten days' notice we agree that execution may issue against our property for unpaid costs.

J. R. MULVANE.

Endorsed: No. 11392. S. H. H. Clark *et al.*, receivers, etc., *vs.* The City of Kansas City, K., *et al.* Bond for costs. Approved and filed February 22nd, 1899. Jno. Martin, clerk supreme court. This bond is perfectly good. —— ——, attorney for plaintiff in error.

67 And thereafter, on the 1st day of March, there was filed in the office of the clerk of the supreme court of the State of Kansas a motion to advance said cause, which, with the endorsements thereon, is in the words and figures as follows, to wit:

68 In the Supreme Court of the State of Kansas.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error, *vs.* The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schmierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.	No. 11392. Motion to Advance.

Plaintiffs in error move the court to advance the above-entitled cause, and for reasons therefor say—

That this cause was brought in the court of common pleas of Wyandotte county, Kansas, for the purpose of enjoining the collection of certain tax levies of the city of Kansas City, Kansas, and of the board of education of the city of Kansas City, Kansas, extended against certain property of the Union Pacific Railway Company, plaintiffs claiming that the property was attempted to be taken into the city of Kansas City, Kansas, under and by virtue of an unconstitutional statute of the State of Kansas. The statute involved was chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory."

The trial court held that the statute was in violation of the fourteenth amendment to the Constitution of the United States, and granted an injunction as prayed for by plaintiffs. The de-

69 fendants thereupon prosecuted a writ of error to this court.

This court reversed the decision of the lower court, and directed that defendants' demurrer to plaintiffs' petition be sustained

The decision of this court was rendered upon the 11th day of June, 1898. The opinion of the court is reported in 53 Pacific Reporter, page 468. After the decision of this court had been rendered Clark and others, as receivers, prosecuted a writ of error to the Supreme Court of the United States. That court held that the judgment of this court was not final and that the writ of error must be dismissed. The syllabus of the Supreme Court of the United States reads as follows:

"Where the statute of a State permits the amendment of a petition when a demurrer thereto has been sustained, the judgment of the supreme court of the State reversing the decision of the lower court overruling such a demurrer and directing that it be sustained is not a final judgment reviewable by the Supreme Court on writ of error."

The decision of the Supreme Court of the United States is reported in volume 19, Supreme Court Reporter, page 207.

After the mandate from the Supreme Court of the United States had been received in this court, a mandate was sent to the court of common pleas of Wyandotte county directing that the demurrer to plaintiffs' petition be sustained. The court of common pleas has acted upon that mandate and rendered final judgment in the case. Plaintiffs elected to stand upon their petition without making any amendment thereto. The case has again been filed in this court, and plaintiffs in error desire to submit it to the court at as early a date as possible, to the end that it may be refiled in the Supreme Court of the United States for the purpose of having the question involved decided upon its merits.

70 The only question which is involved in the case, so far as plaintiffs in error are concerned, is whether the statute in question is in violation of the fourteenth amendment to the Constitution of the United States.

Plaintiffs in error show to the court that the cause is one involving questions of a public interest, in this, to wit, if the contention of plaintiffs in error is correct, the township of Wyandotte and school district number 9 are entitled to collect their taxes against the disputed territory. If, on the contrary, the contention of plaintiffs in error is wrong and the statute is constitutional, then the city of Kansas City, Kansas, and the board of education of that city are entitled to those taxes.

It is also desirable to have settled as soon as possible the question as to whether the disputed territory is subject to the jurisdiction of the city of Kansas City, Kansas, whether offenses committed there are offenses against the ordinances of the city of Kansas City, Kansas, and whether the city has the power to exercise jurisdiction in other respects over the disputed territory.

A. L. WILLIAMS,
N. H. LOOMIS,
R. W. BLAIR,
Att'ys for Pl'ffs in Error.

(Endorsed:) 11392. Motion to advance cause. Filed Mar. 1, 1899. Jno. Martin, clerk supreme court.

71 And thereafter, on the 11th day of March, 1899, the same being one of the regular judicial days of the supreme court of the State of Kansas, said court being in session at its court-room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Hon. William A. Johnston and the Honorable William R. Smith, associate justices, the following proceeding was had and remains of record, to wit:

72 *Journal Entry of Assignment.*

S. H. H. CLARK ET AL., Receivers, etc., Pl'ffs in Error,
vs.
CITY OF KANSAS CITY ET AL., Def'ts in Error. } No. 11392.

Now comes on for decision the motion of plaintiffs in error to advance this cause upon the dockets of this court for an early hearing and argument; and thereupon it is ordered that said motion be allowed, and that this cause be advanced to be heard at the April, 1899, session of this court and assigned for April 4th.

73 And thereafter, on the 29th day of March, 1899, there was filed in the office of the clerk of the supreme court proof of the service of the brief of the plaintiff in error, which, with the endorsements thereon, is in the words and figures as follows, to wit:

74 Service of this brief hereby acknowledge- this 18th day of March, 1899.

E. A. ENRIGHT,
Att'y for Wyandotte Township School District No. 9.

Filed March 29th, 1899.

JNO. MARTIN,
Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schmierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error. } No. 11392.

Brief for plaintiffs in error.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiffs in Error.

75 And thereafter, on the 1st day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a motion to dismiss the appeal in this cause; which motion, with the endorsements thereon, is in the words and figures as follows, to wit:

76 In the Supreme Court of the State of Kansas.

S. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error. } No. 11392.

Motion to Dismiss Appeal.

Now comes The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas, and Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, defendants in error in the above-entitled action, and move the court to dismiss the appeal of the plaintiffs in error on the following ground:

That this court has heretofore in this action, to wit, in case No. 10571, The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, defendants in error, in this court, and on the 11th day of June, 1898, said action being between the same parties as are plaintiffs and defendants in this action and upon the same pleadings and involving the same subject-matter and the same questions, and none other, duly ordered and adjudged that the petition of the plaintiffs in error in this case did not state facts
77 sufficient to constitute a cause of action, and did order and adjudge that the demurrer of the defendants named in this motion be sustained to said petition, in pursuance of which judgment the court of common pleas has heretofore entered an order sustaining said demurrer and rendering judgment in accordance with the mandate of this court, by reason of which judgment and proceedings all questions now presented in this case are *res adjudicata*.

T. A. POLLOCK,
City Counselor,
F. D. HUTCHINGS,
City Attorney,
Att'ys for Def'ts Named in This Motion.

(Endorsed:) No. 11392. S. H. H. Clark *et al. vs.* Kansas City. Motion to dismiss appeal by T. A. Pollock, F. D. Hutchings. Filed Apr. 1, 1899. Jno. Martin, clerk supreme court.

78 And thereafter, on the 4th day of April, there was filed in the office of the clerk of the supreme court of the State of Kansas notice of motion to dismiss, together with the proof of the service of said notice, which, with the endorsements thereon, is in the words and figures as follows, to wit:

79 In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, and F. R. COUDERT, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County *County*, Kansas; Benjamin Schmierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Treasurer of Wyandotte County, Kansas, Defendants in Error. } No. 11392.

Notice.

To Hon. A. L. Williams, N. H. Loomis, and R. W. Blair, attorneys for the plaintiffs in error in the above entitled action:

You are hereby notified that the defendants in error named in the motion, a copy of which is annexed hereto, have filed said motion in the supreme court and will ask for a hearing thereof at the time of the hearing of this case.

You are further notified that affidavits and other evidence in support thereof will be offered on the hearing of the same.

T. A. POLLOCK,
City Counselor.
T. D. HUTCHINGS,
City Attorney.

80 Service of above notice acknowledged April 1, 1899.

A. L. WILLIAMS,
N. H. LOOMIS,
R. W. BLAIR,
Att'y. for Pl'ff. in Error.

(Endorsed:) #11392. Clark *et al. vs.* The City of Kansas City *et al.* Proof of service of notice of motion. Filed Apr. 4, 1899. Jno. Martin, clerk supreme court.

81 And also on the 4th day of April, 1899, the same being one of the regular judicial days of the supreme court of the

State of Kansas, said court being in session at its court-room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable William A. Johnston and the Honorable William R. Smith, associate justices of said court, the following proceeding was had and remains of record, to wit:

82 *Journal Entry of Continuance.*

S. H. H. CLARK ET AL., Rec's, etc., Pl'ffs in Error,
vs.
CITY OF KANSAS CITY ET AL., Def'ts in Error. } No. 11392.

On stipulation of counsel for both parties it is ordered that the further hearing of this cause be continued to Thursday, April 6th, 1899.

83 And also on the *on the* 6th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas the proof of service of the brief of plaintiffs in error, which, with the endorsements thereon, is in words and figures following, to wit:

84 Service of this brief hereby acknowledged this 18th day of March, 1899.

F. D. HUTCHINGS,
T. A. POLLOCK,
Att'ys for Defendant in Error Kansas City.

In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,
vs.
THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error. } No. 11392

Brief for plaintiffs in error.

A. L. WILLIAMS,
N. H. LOOMIS, AND
R. W. BLAIR,
Attorneys for Plaintiffs in Error.

Filed Apr. 6th, 1899.

JNO. MARTIN,
Clerk Supreme Court.

85 And also on the 6th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas an answer to the motion of defendants in error to dismiss this appeal; which answer, with the endorsements thereon, is in words and figures as follows, to wit:

86 In the Supreme Court of the State of Kansas.

S. H. H. CLARK ET AL., Receivers, etc.,
vs.
THE CITY OF KANSAS CITY, KANSAS, ET AL. } No. 11392.

Answer of Plaintiffs in Error to the Motion of Defendants in Error to Dismiss This Appeal.

Now comes plaintiffs in error and say that they admit that the question sought to be presented by them under their various assignments of error herein, to wit, whether chapter 74 of the Session Laws of Kansas for 1891 is in conflict with the 14th amendment to the Constitution of the United States, has heretofore, in this action, in case numbered 10571 of this court, been passed upon by this court and decided adversely to plaintiffs in error; and plaintiffs in error say that a true copy of the opinion of this court upon that matter is set forth in the transcript from the court of common pleas of Wyandotte county filed herein.

Plaintiffs in error say that the brief of The City of Kansas City, Kan., *et al.*, who were plaintiffs in error in said case No. 10571, in which said opinion was rendered, contained the following statement:

"This is an injunction suit, and the only question involved in this proceeding in error is the constitutionality of chapter 74 of the Session Laws of Kansas for 1891, the same being an act entitled An act relating to certain cities of the first class and the adding thereto certain adjoining territory."

That the brief of S. H. H. Clark *et al.*, receivers, who were defendants in error in said case No. 10571, in which said decision
87 was rendered, contained the following statement:

"Plaintiffs in error correctly state in their brief that the only question involved in this case is the constitutionality of chapter 74 of the Session Laws of Kansas for 1891, the same being an act entitled An act relating to certain cities of the first class and the adding thereto certain adjoining territory."

Plaintiffs in error say, however, that after the decision of this court was rendered against them herein they took the case by writ of error to the Supreme Court of the United States; that that court dismissed their writ of error upon the sole ground that the judgment of this court was not such a final judgment as could be reviewed by the Supreme Court of the United States. The opinion of the Supreme Court of the United States on that appeal is reported in 172 U. S. Reports, page 334. The syllabus and opinion read as follows

CLARK ET AL.
v.
CITY OF KANSAS CITY, KAN., ET AL. } No. 402.

(JANUARY 3, 1899.)

Courts—Decision of State court—Finality of judgment—Review by Supreme Court—Where the statute of a State permits the amendment of a petition when a demurrer thereto has been sustained the judgment of the supreme court of the State reversing the decision of the lower court overruling such a demurrer and directing that it be sustained is not a final judgment reviewable by the supreme court on writ of error.

In error to the supreme court of the State of Kansas.

A. L. Williams, for plaintiffs in error; F. D. Hutchings and T. A. Pollock, for defendants in error.

Mr. Justice MCKENNA delivered the opinion of the court:

This is a writ of error to the supreme court of the State of Kansas to review a judgment of that court overruling a demurrer of the *nisi prius* court to the petition of plaintiffs in error for an
88 injunction to restrain the collection of taxes levied by the city of Kansas City on lands brought into that city under the act of the legislature of Kansas (Laws 1891, c. 74, sec. 1) authorizing cities of the first class, having a population of 30,000 or more, which shall be subdivided into lots and blocks, or whenever any unplatted tract of land shall lie upon or mainly within any such city, or is so situated as to be bounded on three-fourths of its boundary line by platted territory of or adjacent to such city, or by the boundary line of such city, or by both, the same may be added to and made a part of the city by ordinance duly passed. There was a provision in the law as follows; "But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes when the same is not owned by any railroad or other corporation."

An ordinance was passed, pursuant to the statute, extending the city boundaries so as to include large tracts of land belonging to the Union Pacific railway. A portion of the lands were used for right of way and other railroad purposes, and a large part of them were vacant and unoccupied, which were held by the company for its future uses.

Taxes were levied by the city upon the property and the suit was brought to enjoin their collection. The petition presented the facts and contained the following allegation:

"Nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction equal protection of the laws."

And plaintiffs are advised, and so charge the fact to be, that in so far as said statute attempts to authorize the taking of said lands within the limits of Kansas City, Kansas, as attempted in said ordinance, Exhibit A, it is unconstitutional, null, and void, in this, to wit:

89 "That by reason of that portion of the act which excepts from its operation any tract or tracts of land used for agricultural purposes, when the same is not owned by any railroad or other corporation, it is in violation of that part of the fourteenth amendment to the Constitution of the United States which reads as follows: 'Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.'"

The defendants other than The Township of Wyandotte and School District No. 9 filed a general*y* demurrer to the petition, which was overruled. The defendants The Township of Wyandotte and School District No. 9 did not plead in any way. The demurring defendants electing to stand upon their demurrer, a perpetual injunction was granted as prayed for against them. They appealed to the supreme court, where the judgment of the lower court was reversed (53 Pac., 468), and an order was made directing that court to sustain the demurrer.

The question of the constitutionality of the statute was presented to the supreme court of Kansas, and that court held that it violated neither the Federal nor State constitution. The same question is presented here in six assignments of errors. The specific contention is that the Kansas statute violates that portion of the fourteenth amendment which provides: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The defendants in error, however, object to the jurisdiction of this court, and urge that the judgment appealed from is not a final one, and is not therefore reviewable in this court.

It is further urged that the record does not show that anything was done in the lower court after decision in the supreme
90 court, but that error is prosecuted directly to the judgment of the supreme court, and that that determined only a question of pleading, and that its direction has not yet been acted on, and that no judgment of any kind has been entered against Wyandotte township or school district No. 9.

The law of Kansas prescribing action on demurrer is as follows: "If the demurrer be sustained, the adverse party may amend, if the defect can be remedied by way of amendment, with or without costs, as the court, in its discretion, shall direct."

In Brostwick *v.* Brinkerhoff, 106 U. S., 3; 1 Sup. Ct., 15, it was decided that "the rule is well settled and of long standing that a judgment or decree to be 'final' within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeals and writs of error must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here the court below would have nothing to do but to execute the judgment or decree it had already rendered," for the support of which many cases were cited; and, further, "If the judgment is not one which disposes of the whole case on its merits it is not final. Consequently, it has been uniformly held that a judgment of re-

versal, with leace for further proceedings in the court below, cannot be brought here on writ of error," also citing cases.

This case and those it cites have been applied many times, but we will confine our notice to instances of demurrer. De Armas *v.* U. S., 6 How., 103, was of this kind, but the grounds of demurrer urged there made the rule when applied to them not very disputable, and the case is not of much aid.

In Meagher *v.* Manufacturing Co., 145 U. S., 608; 12 Sup. Ct., 876, the demurrer was overruled with leave to answer over. Upon appeal to the Supreme Court the order overruling the de-
91 murrer was affirmed with costs. The rule of the Supreme Court provided that "upon the reversal, affirmance, or modification of any order or judgment of the district court by this court there will be a remittitur to the district court unless otherwise ordered;" held that the plaintiffs in error, upon the return of the case to the court, could plead over, and hence judgment was not final.

In Werner *v.* City Council, 151 U. S., 360; 14 Sup. Ct., 356, the announcement by the chief justice was: "The writ of error is dismissed. Meagher *v.* Manufacturing Co., 145 U. S., 608; 12 Sup. Ct., 876; Rice *vs.* Sanger, 144 U. S., 197; 12 Sup. Ct., 664; Hume *v.* Bowie, 148 U. S., 245; 13 Sup. Ct., 582."

The statement of the case shows that it was analogous to the case at bar. The motion to dismiss stated that:

"The judgment brought here by writ of error for review is a judgment of the supreme court of the State of South Carolina, which simply affirmed a decision of the lower court overruling a demurrer, and thereby remanded the case to the court below for a hearing on the merits. It is therefore an interlocutory judgment, and is in no sense a final decree.

"To this the plaintiff in error replied: 'The judgment brought here by writ of error for review is the judgment of the supreme court of the State of South Carolina holding that a certain act of the General Assemby of the State of South Carolina entitled "An act to authorize the city council of Charleston to fill up low lots and grounds in the city of Charleston in certain cases and for other purposes," approved on the 18th of December, 1830, is not in violation of the Constitution of the United States, thereby affirming the judgment of the trial court, and so ending the constitutional defense interposed by the plaintiff in error.'

"An examination of the record will show that the main
92 ground of the demurrer interposed in the court below by the plaintiff in error was the unconstitutionality of the act of 1830. It was claimed both there and in the court above, as well as in this court, to be in violation of due process of law."

Rice *v.* Sanger and Hume *v.* Bowie, cited by the chief justice, were not rulings on demurrer, and we have confined our notice to cases of that kind, not because they are separable in principle from the other cases decided, but to observe and explain the rule in its special application. That rule is, in its utmost generality, that no judgment is final which does not terminate the litigation between the parties

to the suit. If anything substantial remain to be done to this end, the judgment is not final. The law of the case upon the pleadings, and hence as presented by the demurrer, may be settled; but if power remain to make a new case, either by the direction of the supreme court or, in the absence of such direction, by the statutes of the State, the judgment is not final.

The statute of Kansas permitted such amendment, and the order of the supreme court did not take it away. Its order proceeds no further than a direction to sustain the demurrer to the petition. That done, the lower court had and had all of its power under the statute, and may exercise it at the invocation of plaintiffs in error. What they may be advised to do we cannot know. We can only consider their right and the power of the court. These existing, if we should affirm the judgment of the supreme court, that court, and maybe this court, may be called upon to determine other issues between the parties.

It follows from these views that the judgment of the supreme court is not final, and the writ of error must be dismisses, and it is so ordered.

93 Plaintiffs in error further say that thereafter a final judgment was rendered in this case by the court of common pleas of Wyandotte county, Kansas, as appears by the record herein, and that for the purpose of reviewing that final judgment they have brought the record thereof to this the highest court of the State — which the decision of the suit could be had, to the end that is this court decided to adhere to its former opinion and decision herein that the case might be taken to the Supreme Court of the United States for the purpose of having that court determine whether said statute is in conflict with the Constitution of the United States.

In view of all which plaintiffs in error respectfully submit that if this court adheres to its former opinion upon that question that the judgment of this court should be an affirmance of the judgment of the lower court and not a dismissal of this appeal.

A. L. WILLIAMS,
N. H. LOOMIS,
R. W. BLAIR,
Att'ys for Pl'ffs in Error.

STATE OF KANSAS, }
Shawnee County, } ss:

N. H. Loomis, of lawful age, being by me first duly sworn, says that he is one of the attorneys for pl'ffs in error herein; that he has read the foregoing answer of plaintiffs in error and knows the contents thereof, and that the statements of fact therein contained are true.

N. H. LOOMIS.

Subscribed and sworn to before me upon this 6th day of April, 1899.

FRANK E. SMITH,
Notary Public. [SEAL.]

94 Commission expires Feb. 27, 1902.

(Endorsed:) 11392. Answer of pl'ffs in error to motion of def'ts in error to dismiss appeal. Filed April 6, 1899. Jno. Martin, clerk supreme court, by F. J. Fritch, dep.

95 And also on the 6th day of April, 1899, the same being one of the regular judicial days of the supreme court of the State of Kansas, said court being in session at its court-room, in the city of Topeka, there being present the Honorable Frank Doster, the Honorable William A. Johnston, and the Honorable William R. Smith, associate justices of said court, the following proceeding was had and remains of record, to wit:

96 *Journal Entry of Judgment.*

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. DOANE, and F. R. COUDERT, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error. } No. 11392.

Upon this 6th day of April, 1899, this cause comes on for hearing upon the motion of certain defendants in error to dismiss the appeal of plaintiffs in error.

And it appearing that this court has heretofore in this action, to wit, in case number 10571, The City of Kansas City, Kansas, *et al.*, plaintiffs in error, *vs.* S. H. H. Clark *et al.*, defendants in error, in this court, and on the 11th day of June, 1898, said action being between the same parties as are plaintiffs in error and defendants in error in this action, and upon the same pleadings and involving the same subject-matter and the same question and none other, to wit, whether chapter 74 of the Session Laws of Kansas for 1891 is in conflict with the fourteenth amendment to the Federal Constitution, duly ordered and adjudged that the petition of plaintiffs in error in this case did not state facts sufficient to constitute a cause of action, and did order and adjudge that the demurrer of the defendants in error named in this action be sustained to said petition,

97 a copy of the opinion of this court in said case being included in and made a part of the record on this appeal, in pursuance of which decision and judgment in this court the court of common pleas of Wyandotte county, Kansas, has heretofore entered an order sustaining said demurrer, and has rendered a final judgment in accordance with the mandate and opinion of this court; and it appearing that the appeal from the decision of this court in said case

number 10571 to the Supreme Court of the United States was dismissed by that court upon the ground that the judgment appealed from was not a final one, and it further appearing that final judgment has since been entered herein, and that plaintiffs in error desire to appeal therefrom to the Supreme Court of the United States for the purpose of reviewing the decision of this court:

It is therefore ordered and adjudged, for the reasons given in said opinion, that the judgment of the court of common pleas of Wyandotte county be, and the same is hereby, affirmed.

It is by the court further considered, ordered, and adjudged that the defendants in error do have and recover of and from the plaintiffs in error their costs herein, taxed at twenty dollars; to which rulings and judgment of the court plaintiffs in error duly except.

Upon application of plaintiffs in error, and that there may be no question as to the opinion of this court heretofore rendered herein being a part of the record on this appeal, it is by the court ordered that the copy of said opinion included in and made a part of the transcript from the court of common pleas of Wyandotte county, Kansas, be, and the same *be* hereby, declared to be a part of the record of this court in this case.

It is by the court further ordered, upon application of plaintiffs in error, that the judgment of this court rendered in said
98 case number 10571 upon the 11th day of June, 1898, reversing the judgment of the lower court and directing that the demurrer to plaintiffs' petition be sustained, be, and the same is hereby, made a part of the record in this case, and the clerk of this court is hereby directed to make and attach to the record herein a certified copy of said judgment.

In the Supreme Court of the State of Kansas.

Be it remembered that on Saturday, the 11th day of June, 1899, before the supreme court of the State of Kansas, in session at its court-room, in the city of Topeka, the following proceeding was had and remains of record at page 437 of Journal "A A" of said court:

CITY OF KANSAS CITY ET AL., Pl'ffs in Error,
vs.
THE U. P. R'L'Y CO. ET AL., Def'ts in Error. } No. 10571.

This cause comes on for decision, and thereupon it is ordered and adjudged that the judgment of the court below be reversed and that this cause be remanded with directions to sustain the demurrer to the petition. It is further ordered that the defendants in error pay the costs of this case in this court, taxed at $25.60, and hereof let execution issue.

Witness my hand and the seal of the supreme court attached hereto, at my office, in Topeka, this 17th day of April, 1899.

[Seal Supreme Court, State of Kansas.]

JNO. MARTIN,
Clerk Supreme Court,
By F. J. FRITCH, *Deputy.*

99 And thereafter, on the 7th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas proof of the service of the brief of the defendants in error, which, with the endorsements thereon, is in the words and figures as follows, to wit:

100 STATE OF KANSAS, }
County of Wyandotte. }

Service of copy of within brief acknowledged.

A. L. WILLIAMS,
N. H. LOOMIS,
Att'ys for Pl'ff- in Error.

April 4th, 1899.

Filed April 7th, 1899.

JNO. MARTIN,
Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error. } No. 11392.

Brief for defendants in error, The City of Kansas City, Kansas; The Board of Education of Kansas City, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas, and Leonard C. Daniels, as county clerk of Wyandotte county, Kansas.

F. D. HUTCHINGS,
City Attorney.
T. A. POLLOCK,
City Counselor.

101 And thereafter, on the 11th day of April, 1899, there was filed in the office of the supreme court of the State of Kansas a petition for a writ of error, which, with the endorsements thereon, is in the words and figures as follows, to wit:

102 In the Supreme Court of the State of Kansas.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error, *vs.* The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.	No. 11392. Petition for Writ of Error.

Now come S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs in error herein, and say that on the 6th day of April, 1899, this court entered judgment herein in favor of the defendants in error and against these plaintiffs in error, in which judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of these plaintiffs in error; all of which will more in detail appear from the assignment of errors which is filed with this petition in error.

Wherefore these plaintiffs in error pray that a writ of error may be allowed in this behalf to the Supreme Court of the United States for the correction of the errors complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to said Supreme Court of the United States.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,
Attorneys for S. H. H. Clark et al., Plaintiffs in Error.

103 [Endorsed:] No. 11392. In the supreme court of the State of Kansas. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Petition for writ of error. Filed Apr. 11, 1899. Jno. Martin, clerk supreme court. 1.

104 And also on the same day there was filed in the office of the clerk of the supreme court of the State of Kansas an assignment of errors, which, with the endorsements thereon, is in the words and figures as follows, to wit:

105 In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.

Assignment of Errors.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, plaintiffs in error herein, in connection with their petition for a writ of error, make the following assignment of errors which they aver appear in the record in this cause, to wit:

First.

The supreme court of the State of Kansas erred in affirming the judgment of the lower court.

Second.

The supreme court of the State of Kansas erred in failing and refusing to reverse the judgment of the lower court.

Third.

The supreme court of the State of Kansas erred in holding that these plaintiffs in error could not complain of the fact that chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was in violation of that part of
106 the fourteenth amendment to the Federal Constitution which reads as follows: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Fourth.

The supreme court of the State of Kansas erred in failing and refusing to hold that chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was in violation of that part of the fourteenth amendment to the Federal Constitution which reads as follows: "Nor shall any State deprive any person of life, liberty or property without due process

of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Fifth.

The supreme court of the State of Kansas erred in refusing to hold that the exception contained in chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," did not bring said act within the inhibition of that part of the fourteenth amendment to the Federal Constitution which reads as follows: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," the exception in said statute herein referred to being as follows:

"But nothing in this act shall be taken or held to apply to any tract or tracts of land used for agricultural purposes when the same is not owned by any railroad or other corporation."

107 Sixth.

The supreme court of the State of Kansas erred in holding that said chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was and is valid in so far as these plaintiffs in error are concerned and binding upon them.

Seventh.

The supreme court of the State of Kansas erred in holding that the action of the city of Kansas City in taking within its limits the property of the Union Pacific Railway Company under the provisions of chapter 74 of the Session Laws of Kansas for 1891, being an act entitled "An act relating to certain cities of the first class and the adding thereto certain adjoining territory," was legal, and that the tax levies of said city extended against said property were valid.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,

Attorneys for S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs in Error.

108 [Endorsed:] No. 11392. In the supreme court of the State of Kansas. S. H. H. Clark *et al.*, receivers of the Union Pacific R'y Co., plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Assignment of errors. 2. Filed Apr. 11, 1899. Jno. Martin, clerk supreme court.

109 And also on said 11th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition for reversal, which, with the endorsements thereon, is in the words and figures as follows, to wit:

110 In the Supreme Court of the United States.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY Anderson, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.

} Petition for Reversal.

S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, in connection with their petition for a writ of error and their assignment of errors entitled and filed in this cause in the supreme court of the State of Kansas, pray that the said judgment rendered against them in the supreme court of the State of Kansas on the 6th day of April, 1899, may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by reason of such judgment.

A. L. WILLIAMS,
N. H. LOOMIS, &
R. W. BLAIR,

Attorneys for S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, Receivers of the Union Pacific Railway Company, Plaintiffs in Error.

111 [Endorsed:] In the Supreme Court of the United States. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Petition for reversal. Filed Apr. 11, 1899. Jno. Martin, clerk supreme court. 3.

112 And also on said 11th day of April, 1899, the same being one of the regular judicial days of the January term of the supreme court of the State of Kansas, before the Honorable Frank Doster, chief justice, sitting at his chambers in the city of Topeka, the following proceeding is had and remains of record, to wit:

113 In the Supreme Court of the State of Kansas.

S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, J. W. Doane, and F. R. Coudert, as Receivers of the Union Pacific Railway Company, Plaintiffs in Error,

vs.

THE CITY OF KANSAS CITY, KANSAS; THE BOARD OF EDUCATION of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9 of Wyandotte County, Kansas; Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Treasurer of Wyandotte County, Kansas, Defendants in Error.

Journal Entry Allowing Writ of Error.

Upon this day come S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, plaintiffs in error in the above-entitled cause, by A. L. Williams, their attorney, and present to the undersigned, chief justice of the supreme court of the State of Kansas, their petition herein, praying for the allowance of a writ of error in the above-entitled cause to the Supreme Court of the United States for the correction of certain errors complained of and more fully set forth in the assignment of errors accompanying said application for a writ of error.

Upon consideration whereof it is hereby ordered that the said petition be, and the same is hereby, granted and the said writ of error allowed. The said plaintiffs in error thereupon present their bond for costs on said writ of error in the sum of one thousand dollars, with P. I. Bonebrake, of Topeka, Kansas, and J. R.
114 Mulvane, of Topeka, Kansas, as sureties.

Upon consideration whereof the said bond and the sufficiency of the sureties thereupon is hereby approved by me.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

115 And also on the 11th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a writ of error, which, with the allowance thereof by the Honorable Frank Doster, chief justice, endorsed thereon, and the endorsements thereon, is in words and figures as follows:

116 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Kansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Kansas, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between S. H. H. Clark, Oliver W. Mink,

E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs in error, and The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte County, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, defendants in error, wherein there was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the right, title, privi-
117 lege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 11th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Circuit Court of the United States, District of Kansas, 1862.]

GEO. F. SHARITT,
Clerk of the Circuit Court of the United States
for the District of Kansas.

Allowed by—

FRANK DOSTER,
Chief Justice of the Supreme Court
of the State of Kansas.

118 [Endorsed:] In the Supreme Court of the United States. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway

Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Writ of error. 5. Filed Apr. 11, 1899. Jno. Martin, clerk supreme court.

119 And also on the 11th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a bond for costs, which, with the approval thereof by the Honorable Frank Doster, chief justice of said court, and with the endorsements thereon, is in words and figures as follows, to wit:

120 Know all men by these presents that we, P. I. Bonebrake and J. R. Mulvane, of Topeka, Shawnee county, Kansas, are held and firmly bound unto the City of Kansas City, Kansas; the Board of Education of the City of Kansas City, Kansas; the Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, and each and every of them in the full and just sum of one thousand dollars ($1,000.00), to be paid to the said City of Kansas City, Kansas; the Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, their successors, heirs, executors, administrators, and assigns and each and every of them; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Whereas, upon the 6th day of April, A. D. 1899, in a suit depending in the supreme court of the State of Kansas between S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs in error, and The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, defendants in error, judgment was rendered against said plaintiffs in error, and said plaintiffs in error have obtained a writ of error in the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants in error, citing and admonishing them to be and appear in the Supreme

121 Court of the United States, at the city of Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, shall prosecute said writ of error to effect and answer all

costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

Sealed with our hands and dated this 11th day of April, 1899.

P. I. BONEBRAKE.
J. R. MULVANE.

Approved by—

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

122 [Endorsed:] In the supreme court of the State of Kansas. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Cost bond. 7. Filed Apr. 11, 1899. Jno. Martin, clerk supreme court.

123 And afterwards on the 17th day of April, 1899, there was filed in the office of the clerk of the supreme court of the State of Kansas a citation, which, with the acknowledgement of service thereof endorsed thereon and proof of service attached thereto, is in words and figures as follows, to wit:

124 UNITED STATES OF AMERICA, *ss:*

To the City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; The Township of Wyandotte of Wyandotte County, Kansas; School District No. 9, Wyandotte County, Kansas; Benjamin Schnierle, as county treasurer of Wyandotte county, Kansas; Leonard C. Daniels, as successor in office of Charles E. Bruce and as county clerk of Wyandotte county, Kansas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein you are defendants in error and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, and F. R. Coudert, receivers of the Union Pacific Railway Company, are plaintiffs in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank Doster, chief justice of the supreme court of the State of Kansas, this 11th day of April, 1899.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

125 Service of this citation hereby acknowledged upon this 12th day of April, A. D. 1899.

F. D. HUTCHINGS,
City Attorney,
T. A. POLLOCK,
City Counselor,
Attorneys for The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas; Benjamin Schnierle, as County Treasurer of Wyandotte County, Kansas, and Leonard C. Daniels, as Successor in Office of Charles E. Bruce and as County Clerk of Wyandotte County, Kansas, Defendants in Error.

E. A. ENRIGHT,
Attorney for The Township of Wyandotte of Wyandotte County, Kansas, and School District Number Nine, Wyandotte County, Kansas, Defendants in Error.

126 [Endorsed:] 11392. In the supreme court of the State of Kansas. S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas, *et al.*, defendants in error. Citation. Filed Apr. 17, 1889. Jno. Martin, clerk supreme court. 6.

127 In the Supreme Court of the State of Kansas.

S. H. H. Clark et al., Receivers, etc., Pl'ffs in Error,
vs.
City of Kansas City et al., Def'ts in Error.
} No. 11392.

I, John Martin, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, correct, true, and complete transcript of all pleadings and papers filed and all proceedings had as the same remain now on file and of record in my office, and, in obedience to the command of the writ of error in said transcript set forth, I herewith transmit to the Supreme Court of the United States said transcript of the record and proceedings as above set forth, with all things concerning the same.

Seal Supreme Court, State of Kansas.

In witness whereof I hereto subscribe my name and affix the seal of the supreme court of the State of Kansas this 17th day of April, 1899.

JNO. MARTIN,
Clerk Supreme Court,
By F. J. FRITCH, *Dep.*

Endorsed on cover: File No. 17,375. Kansas supreme court. Term No., 790. S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, J. W. Doane, & F. R. Coudert, as receivers of the Union Pacific Railway Company, plaintiffs in error, *vs.* The City of Kansas City, Kansas; The Board of Education of the City of Kansas City, Kansas, *et al.* Filed April 21st, 1899.